

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION’S
MEMORANDUM CONTRA
THE CONSUMER GROUPS’ SECOND APPLICATION FOR REHEARING**

I. Introduction

The Public Utilities Commission of Ohio should reject the rehearing argument of six Consumer Groups¹ urging the Commission to preclude a party from responding to a consumer petition filed under the new process for abandonment of basic local exchange service (“BLES”) set forth in Ohio Revised Code Section (“R.C.”) 4927.10. The Consumer Groups state that the Commission should process the consumer petition, but without the utility who would be affected thereby being able to respond to the consumer petition.² To accept the Consumer Groups’ argument would result in a rule that would be not only contrary to the Commission’s existing rules, but also be fundamentally unfair. The Commission, therefore, should reject their request outright.

II. Background

The Commission is establishing, via this proceeding, new regulations associated with the withdrawal or abandonment of BLES by an incumbent local exchange carrier (“ILEC”).

¹ The six Consumer Groups are Communities United for Action, Edgemont Neighborhood Coalition, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. and Southeastern Ohio Legal Services.

² See the Consumer Groups’ Second Application for Rehearing at 5.

In its April 5, 2017 Entry on Rehearing, the Commission held that an authorized representative other than legal counsel may file a petition under R.C. 4927.10(B) on a customer's behalf. The Commission added that "an ILEC may object to the filing of a petition to the extent that it believes that the petition is not filed by an authorized representative."³

The Consumer Groups filed a Second Application for Rehearing on May 5, 2017, and claim in their Assignment of Error No. 1 that it would be unreasonable to allow the filing of an objection to the 4927.10(B) petitions. The Ohio Cable Telecommunications Association ("OCTA") has participated throughout this rulemaking proceeding and now responds to the Consumer Groups' attempt to limit legal rights.

III. Argument

Allowing an objection to a 4927.10(B) petition is neither unreasonable nor unlawful; rather, it is consistent with the Commission's procedural rules and the concept of fundamental fairness.

The Consumer Groups claim that allowing a telephone company⁴ to object to a petition submitted on behalf of a customer is unreasonable, especially when the credentials of the customer's representative are the only grounds for the challenge.⁵ In the Consumer Groups' view, allowing a response to the petition would "needlessly impede" the Commission's investigation⁶ and create an "unnecessary intrusion into the process the General Assembly established to protect consumers who are losing basic service."⁷ The Consumer Groups maintain that the Commission is capable of scrutinizing petitions and that

³ See the April 5, 2017 Entry on Rehearing at ¶ 71.

⁴ The Commission allowed an ILEC to object; the Consumer Groups have argued against allowing telephone companies the opportunity to object.

⁵ See the Consumer Groups' Second Application for Rehearing at 4.

⁶ *Id.* at 3.

⁷ *Id.* at 4.

the telephone company's role should be limited to cooperating with the Commission in its investigation.⁸

The Consumer Groups' first assignment of error is inconsistent with the Commission's procedural rules and contrary to the concept of fundamental fairness. The Commission's proceedings allow parties a fair opportunity to participate, which includes not only the opportunity to put forth the facts and legal arguments, but also to *respond* to other parties. The Commission has established, via procedural rules, a framework for its administrative proceedings that expressly includes the opportunity to respond to numerous pleadings.⁹ Specifically, the Commission's procedural rules permit a responsive filing or objections to nearly every type of pleading that is filed – complaints,¹⁰ motions,¹¹ interlocutory appeals,¹² applications for rehearing,¹³ staff reports,¹⁴ etc. To ignore that framework and prohibit an objection to a 4927.10(B) petition is completely inconsistent with the Commission's procedural rules.

The Commission's rules also specifically require that applications, complaints and other pleadings filed by any person shall be in writing and signed by the person or his/her attorney.¹⁵ This rule protects against those intending to abuse the legal system by filing documents on behalf of others without authorization. The Commission, thus, has recognized the important public policy of protecting against such abuse. It would be inconsistent to

⁸ *Id.*

⁹ See Chapter 4901-1 of the Ohio Administrative Code ("OAC").

¹⁰ See Rule 4901-9-01(B) of the OAC.

¹¹ See Rule 4901-1-12(B) of the OAC.

¹² See Rule 4901-1-15(D) of the OAC.

¹³ See Rule 4901-1-35(B) of the OAC.

¹⁴ See Rule 4901-1-28(B) of the OAC.

¹⁵ See Rule 4901-1-4 of the OAC. The OCTA has raised in its own Application for Rehearing filed on May 5, 2017, the claim that allowing an "authorized representative" to file a petition on behalf of a consumer may not be consistent with this rule. That argument is separate from what the Consumer Groups propose in the first assignment of error of their Second Application for Rehearing.

preclude in the context of the abandonment proceedings an ILEC or a telephone company (who have access to customer records) the opportunity to challenge or object to a filing where circumstances suggest that the filing may not be legitimate. In keeping with the procedural framework of Commission proceedings, Rule 4901-1-4 in particular, and fundamental fairness, the Consumer Groups' first assignment of error should be summarily rejected.

In addition, the Consumer Groups point to the compressed time frame in the statutory process as a reason for eliminating challenges to customer petitions. Since the Commission only has ninety days to complete its investigation and determine whether a reasonable and comparatively priced voice service is available at the petitioning customer's home, the Consumer Groups suggest that objections would likely impede the process, making fulfillment of the Commission's duty under the statute more difficult.¹⁶ The time period under which the Commission will evaluate these cases should not justify superseding fundamental fairness and the opportunity to be heard. Moreover, it is inappropriate to assume that whether the customer authorized the filing of the petition by another will not, in and of itself, be time consuming or difficult to determine. This argument must also be rejected.

IV. Conclusion

Allowing an objection to a 4927.10(B) petition is neither unreasonable nor unlawful. The Commission's position on this issue is consistent with its own rules and the concept of fundamental fairness. On the other hand, the Consumer Groups' proposal to prohibit challenges or objections in these proceedings is unreasonable and unlawful. In keeping with the numerous Commission procedural rules and with the concept of fundamental fairness, the

¹⁶ See the Consumer Groups' Second Application for Rehearing at 4-5.

Consumer Groups' First Assignment of Error contained in their Second Application for Rehearing filed on May 5, 2017 must be rejected.

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608), Counsel of Record

Stephen M. Howard (0022421)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

P.O. Box 1008

Columbus, Ohio 43216-1008

614-464-5407

614-719-4793 (fax)

glpetrucci@vorys.com

smhoward@vorys.com

*Attorneys for the Ohio Cable Telecommunications
Association*

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served via electronic mail on this 15th day of May, 2017 to the following:

Matthew Myers
Unite Private Networks
120 S. Stewart Rd.
Liberty, MO 64068
matthew.myers@upnfiber.com

Patrick M. Crotty
Cincinnati Bell Telephone Co. LLC
221 East Fourth Street, Suite 1090
Cincinnati, Ohio 45202
patrick.crotty@cinbell.com

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
130 West Second St., Suite 700 East
Dayton, Ohio 45402
ejacobs@ablelaw.org

Noel M. Morgan
Legal Aid Society of Southwest Ohio LLC
215 E. Ninth St.
Cincinnati, Ohio 45202
nmorgan@lascinti.org

Terry L. Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
terry.etter@occ.ohio.gov

Michael R. Smalz
Ohio Poverty Law Center
555 Buttles Avenue
Columbus, Ohio 43215
msmalz@ohiopovertylaw.org

Peggy P. Lee
Southeastern Ohio Legal Services
964 East State Street
Athens, Ohio 45701
plee@oslsa.org

Scott E. Elisar
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
selisar@mwncmh.com

Douglas W. Trabaris
Mark R. Ortlieb
AT&T Ohio
225 West Randolph Street, Floor 25D
Chicago, IL 60606
dt1329@att.com
mo2753@att.com

Michael Walters
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, Ohio 45237
mwalters@proseniors.org

Christen M. Blend
Porter, Wright Morris & Arthur, LLP
41 South High Street, 29th Floor
Columbus, Ohio 43215
cblend@porterwright.com

Barth E. Royer
Barth E. Royer LLC
2740 East Main Street
Bexley, Ohio 43209
barth.royer@aol.com

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202
dhart@douglasshart.com

William Haas
T-Mobile
2001 Butterfield Road
Downers Grove, IL 60515
william.haas@t-mobile.com

David Vehslage
Verizon
3939 Blue Spruce Drive
Dewitt, MI 48820
david.vehslage@verizon.com

William R. Wright
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, Ohio 43215
william.wright@ohioattorneygeneral.gov

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/15/2017 4:14:12 PM

in

Case No(s). 14-1554-TP-ORD

Summary: Memorandum Memorandum Contra the Consumer Groups' Second Application for Rehearing electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association