

**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. |) | |

**MEMORANDUM CONTRA OCTA'S APPLICATION FOR REHEARING
BY
COMMUNITIES UNITED FOR ACTION
EDGEMONT NEIGHBORHOOD COALITION,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
PRO SENIORS, INC., AND
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

In this proceeding, the Public Utilities Commission of Ohio ("PUCO") is reviewing rules that affect Ohioans' rights in their dealings with telephone companies. Consumer protections in the rules are essential for the provision of adequate service.

The PUCO issued its Order adopting draft telephone rules on November 30, 2016. On April 5, 2017, the PUCO issued its Second Entry on Rehearing ("Entry") modifying some rules and denying rehearing on others.¹ Consumer Groups² appreciate the consumer protections the PUCO adopted in the Draft Rules.

On May 5, 2017, Consumer Groups filed an application for rehearing of the Entry regarding two issues that require additional consumer protections. First, the Entry unreasonably allowed telephone companies to object to a petition filed on behalf of a

¹ On January 25, 2017, the PUCO issued its first Entry on Rehearing granting rehearing for the purpose of giving itself more time to consider the issues.

² Consumer Groups include Communities United for Action, Edgemont Neighborhood Coalition, the Office of the Ohio Consumers' Counsel, Pro Seniors, Inc., and Southeastern Ohio Legal Services.

customer who does not have alternatives to the telephone company's basic service. This may needlessly delay the process for finding an alternative service for the customer. Second, Draft Rule 21(B)(1) does not require submission of a *final* order from the Federal Communications Commission giving the telephone company the requisite authorization to withdraw basic service under R.C. 4927.10(A). This unreasonably places customers at risk for unlawful loss of their basic service.

The Ohio Cable Telecommunications Association ("OCTA") also filed an application for rehearing of the Entry. OCTA makes three claims of error in its application for rehearing:

1. It was unjust and unreasonable for the PUCO to conclude that it has to "extend its reach" and regulate voice services, including Voice over Internet Protocol ("VoIP") services.
2. It was unjust and unreasonable for the PUCO to endorse the filing of an Ohio Revised Code 4927.10(B) petition by myriad third parties and to not define an "authorized representative."
3. It was unjust and unreasonable for the PUCO to fail to review/revise the Amended Business Impact Analysis in light of the adopted amended rules for Chapter 4901:1-6.³

The PUCO should deny OCTA's application for rehearing regarding the first two claims of error.⁴ Most of OCTA's arguments merely reiterate assertions that the PUCO already addressed in the Entry. The rest of OCTA's arguments are without merit.

³ See OCTA Application for Rehearing at 1.

⁴ Consumer Groups take no position regarding the third claim of error. If Consumer Groups do not address a particular argument presented in any of the applications for rehearing, this should not be construed as the Consumer Groups' acquiescence to that argument.

II. RECOMMENDATIONS

- A. **In the Entry, the PUCO adequately explained why it is extending its jurisdiction over sole providers of voice service and of residential customers' access to emergency services, because such jurisdiction is necessary for the protection, welfare, and safety of the public.**

In its Order, the PUCO adopted Draft Rule 21, which sets out the process for an incumbent telephone company to withdraw basic service. It also adopted Draft Rules 21(F) and (G), which apply to sole providers of voice service. Draft Rule 21(F) requires a sole provider of voice service seeking to abandon or withdraw the service to give as little as 30 days' notice to the PUCO.⁵ Under Draft Rule 21(G), the PUCO may apply all of Draft Rule 21, on a case-by-case basis, to a sole provider of voice service if the PUCO determines that (1) a residential customer of voice service will not have access to 9-1-1 service if the provider withdraws or abandons its voice service or (2) the provider is the sole provider of emergency services to residential customers.⁶ For these two rules, the PUCO bases its jurisdiction over voice services on R.C. 4927.03(A).

Additionally, in Draft Rule 2(C) the PUCO made all of Rule 21 applicable to VoIP providers "to the extent necessary for the protection, welfare, and safety of the public...."⁷ And, in Draft Rule 2(D), it applied all of Rule 21 to telecommunications services that were not commercially available as of September 13, 2010 and that use technology not commercially available before September 13, 2010.⁸ On rehearing, the PUCO upheld these rules.

⁵ Order at 59-60.

⁶ *Id.*, Attachment A at 39.

⁷ Entry, Attachment A at 5.

⁸ *Id.*

In its latest application for rehearing, OCTA claims that the PUCO exceeded its jurisdiction in adopting these rules.⁹ OCTA first contends that the Legislature did not grant the PUCO authority to regulate providers of the voice service offered through VoIP and other new technologies.¹⁰ OCTA makes the same arguments that it and other telephone interests made in applications for rehearing of the Order.¹¹ The PUCO disposed of those arguments in the Entry.¹² Rehearing should be denied.

Next, OCTA claims that the PUCO used R.C. 4927.03(A) to unlawfully extend the reach of its rules over VoIP and new technologies. In making this claim, OCTA clutches onto a single sentence in the Entry where the PUCO stated that it had to “extend the reach of its rule” to include other providers of voice service in order to meet its statutory obligation. OCTA asserts that nothing in R.C. 4927.03(A) gives the PUCO authority “to create and apply new regulations to voice services, including VoIP services,” just because an incumbent telephone company withdraws or abandons basic service.¹³ OCTA is wrong.

OCTA bases its argument on language from R.C. 4927.03(A). OCTA claims that the statute removes PUCO jurisdiction over VoIP, as well as telecommunications services not commercially available on September 13, 2010 that employ technology not commercially available before September 13, 2010.¹⁴ OCTA, however, omitted

⁹ OCTA also sought rehearing of Rules 21(G) and (F) in its application for rehearing filed on December 30, 2016.

¹⁰ OCTA Application for Rehearing at 5-6.

¹¹ *See* OCTA’s December 2016 Application for Rehearing at 4-7. *See also* Application for Rehearing of the Ohio Telecom Association (December 30, 2016) at 7-9; AT&T Ohio’s Application for Rehearing (December 30, 2016) at 14-18.

¹² Entry, ¶¶ 88-92.

¹³ OCTA Application for Rehearing at 6.

¹⁴ *Id.* at 7.

important language in the statute that gives the PUCO jurisdiction over these services: “unless the commission, upon a finding that the exercise of the commission's authority is necessary for the protection, welfare, and safety of the public, adopts rules specifying the necessary regulation.” The PUCO made such a finding in the Order in this case.

In the Order, the PUCO discussed its responsibility to regulate VoIP and other new telecommunications services “to ensure the protection, welfare, and safety of the public.”¹⁵ The PUCO went on to state, “Absent this obligation, which may be placed upon either the ILEC or the remaining sole provider of voice service, the protection, welfare, and public safety of those identified as at risk residential subscribers who do not have access to voice services may be jeopardized.”¹⁶ The PUCO then highlighted “the need for access to voice service in order to have access to 9-1-1, emergency services, and for the purpose of transmitting information related to medical devices.”¹⁷

After this discussion, the PUCO made the following finding: “In the scenario in which an entity is the sole provider of voice service in a particular geographic area, the abandonment or withdrawal of such service *will result* in the inability of affected customers to access these services. Therefore, in order to ensure that all subscribers have access to emergency services, pursuant to its approval of adopted rule 4901:1-6-21(G), the sole provider of voice service, regardless of the technology utilized for its provisioning, may be subject to the all of the provisions of approved rule 4901:1-6-21 on a case-by-

¹⁵ Order, ¶ 205.

¹⁶ *Id.*

¹⁷ *Id.*

case basis.”¹⁸ The PUCO’s Entry affirmed that the requisite finding was made.¹⁹ Hence, OCTA’s argument is flawed.

OCTA also contends that the PUCO “has not previously found it ‘necessary’ to backtrack from its regulatory exclusions for voice services, including VoIP services.”²⁰ But OCTA overlooks the fact that, for the first time, VoIP or another voice service may be the *only* phone service available to some consumers, should an incumbent phone company withdraw basic service.

Before the passage of HB 64, incumbent telephone companies’ carrier of last resort obligations under R.C. 4927.11 ensured that Ohioans had a landline service available to them. Before HB 64, an incumbent phone company could withdraw basic service in an exchange only by applying for PUCO authorization.²¹ The application must show, among other things, the alternative phone service providers available to affected consumers.²² The PUCO could grant the application only if it found the request to be “just, reasonable, and not contrary to the public interest, and that the applicant demonstrates a financial hardship or an unusual technical limitation...”²³ That is not the case now.

After an incumbent phone company has received the requisite approval from the Federal Communications Commission, R.C. 4927.10(A) allows the company to withdraw basic service throughout one or more exchanges upon 120 days’ notice to the PUCO and

¹⁸ *Id.*, ¶ 206 (emphasis added).

¹⁹ Entry, ¶ 89.

²⁰ OCTA Application for Rehearing at 7.

²¹ R.C. 4927.11(C).

²² *Id.*

²³ *Id.*

affected customers. The company does not need to show that all – or any – affected customers have alternative service available. Hence, some customers may have just one option (such as a cable company’s VoIP).²⁴

But if the provider of alternative service should withdraw or abandon service, consumers may have no access to emergency services. The welfare and safety of those consumers may be jeopardized. That is why the PUCO has rightly exercised jurisdiction over voice service provided through VoIP and other newer technologies when it is the only way consumers may access emergency services. OCTA’s argument to the contrary is without merit.

OCTA has not given the PUCO sufficient reason to grant rehearing on this issue. The PUCO should deny OCTA’s application for rehearing.²⁵

B. The PUCO has already sufficiently addressed the OCTA’s arguments regarding petitions filed on behalf of customers.

In its application for rehearing, OCTA opposes allowing a customer who does not have alternative voice service available to petition the PUCO through an authorized representative.²⁶ OCTA argues that it was unjust and unreasonable for the PUCO to “endorse” the filing of petitions under R.C. 4927.10(B) by “myriad third parties....”²⁷

²⁴ Some customers may be left without an alternative service after their incumbent telephone company withdraws basic service. The General Assembly recognized this and added a process for identifying such customers, which includes PUCO assistance in finding alternative service. R.C. 4927.10(B).

²⁵ The PUCO, however, may consider inserting “to the extent necessary for the protection, welfare, and safety of the public” after “4901:1-6-21” in Draft Rule 2(D), in order to be consistent with Draft Rule 2(C).

²⁶ OCTA does not claim that its members would be harmed if an authorized representative may file a petition on behalf of an affected customer. It appears that no harm exists for cable companies. The petition process applies only to incumbent telephone companies, not to cable companies providing telephone service. *See* Draft Rule 21(C). And there should be no harm in the unlikely event that any customer petitions are filed as the result of the process applying to a cable company under Draft Rule 21 (F) or (G). The cable company should not be involved in determining petitions’ validity. Its only role should be in cooperating with the PUCO in its investigation to find an alternative provider for the customer. *See* Consumer Groups’ Second Application for Rehearing (May 5, 2017) at 4.

²⁷ OCTA Application for Rehearing at 8.

OCTA takes issue with the PUCO's determination that customer petitions are "tantamount to notice filings."²⁸ OCTA contends that a customer petition is more than a notice filing because it will make claims that the PUCO is required by statute to dispose of.²⁹ OCTA also asserts that filing a petition on behalf of a customer might constitute the unauthorized practice of law.³⁰ The PUCO has already addressed and rejected these arguments.

The PUCO noted that allowing authorized representatives to file petitions on behalf of affected customers is especially necessary because of the extremely short timeframe (30 days) that customers have to file petitions.³¹ In any event, the General Assembly did not specify the form customer petitions should take, and thus the PUCO has proper discretion to treat customer petitions as less-formal notices. Therefore, the PUCO should deny OCTA's application for rehearing.

The PUCO also rejected arguments that filing an application on behalf of an affected customer would constitute the unauthorized practice of law. The PUCO recognized that customer petitions are not formal applications.³² Customer petitions certainly would not be "complaints" or "pleadings," as OCTA suggests.³³ No legal positions would be taken in a customer petition. Any "claims" made in customer petitions would be *factual*, not legal, in nature. Customers would simply be asking for

²⁸ *Id.*, citing Entry, ¶ 71.

²⁹ *Id.* at 9.

³⁰ *Id.* at 10.

³¹ Entry, ¶ 71.

³² *Id.*

³³ OCTA Application for Rehearing at 9-10.

PUCO assistance in finding another telephone service provider after their basic service is withdrawn. The PUCO should deny OCTA's application for rehearing.

OCTA further argues that allowing authorized representatives to file petitions on behalf of customers contradicts the rule requiring filings at the PUCO to be signed by the person making the filing or by his or her attorney.³⁴ The PUCO should not be persuaded by this argument. The rule applies to "applications, complaints or other pleadings." As discussed above, customer petitions would not be such documents. In any event, the PUCO "may, upon its own motion or upon a motion filed by a party, waive any requirement of this chapter for good cause shown, other than a requirement mandated by statute from which no waiver is permitted."³⁵ There is no statutory requirement that a customer petition be signed by anyone, and thus the PUCO has discretion in requirements for the signing of petitions. OCTA's argument is baseless.

OCTA contends that the PUCO's ruling "opens the door for various third parties to file petitions...."³⁶ OCTA does not say why third parties would want to arbitrarily file unauthorized petitions for customers. Nevertheless, the PUCO should be able to discern whether someone is authorized to file on behalf of a customer and to verify authorization if there is a question.

OCTA also complains that the situation regarding third-party petitions may be exacerbated because the Entry allows incumbent telephone companies to contest whether a representative is authorized.³⁷ Consumer Groups are also concerned about telephone

³⁴ *Id.* at 9-10, citing Ohio Adm. Code 4901-1-04.

³⁵ Ohio Adm. Code 4901-1-38(B).

³⁶ OCTA Application for Rehearing at 9.

³⁷ *Id.*

companies' needless interference in the petition process, and have sought rehearing on this issue.³⁸ Telephone companies should not be allowed to challenge whether a customer has authorized the filing of a petition seeking PUCO assistance in finding alternative phone service. To protect consumers, the PUCO should modify the Entry and clarify that telephone companies cannot challenge petitions filed on behalf of customers. Nevertheless, the PUCO should deny OCTA's application for rehearing.

III. CONCLUSION

OCTA's arguments for rehearing have either been addressed by the PUCO in this proceeding or are without merit. OCTA has not shown that the PUCO's Order is unreasonable or unlawful, as required for a grant of rehearing under R.C. 4903.10. The PUCO should deny OCTA's application for rehearing on the issues discussed above.

Ohioans need strong protections in their dealings with telephone companies. To enhance the consumer protections in the Draft Rules, the PUCO should grant Consumer Groups' Second Application for Rehearing.

Respectfully submitted,

/s/ Noel M. Morgan

Noel M. Morgan (0066904), Counsel of Record
Senior Attorney
Legal Aid Society of Southwest Ohio LLC
215 E. Ninth St.
Cincinnati, Ohio 45202
Telephone: 513-362-2837
nmorgan@lascinti.org
(will accept service via email)

Attorney for Communities United for Action

³⁸ Consumer Groups Second Application for Rehearing (May 5, 2017) at 3-5.

/s/ Ellis Jacobs

Ellis Jacobs (0017435), Counsel of Record
Advocates for Basic Legal Equality, Inc.
130 West Second St., Suite 700 East
Dayton, Ohio 45402
Telephone: 937-535-4419
ejacobs@ablelaw.org
(willing to accept service by e-mail)

Attorney for Edgemont Neighborhood Coalition

BRUCE WESTON (0016973)
OHIO CONSUMERS' COUNSEL

/s/ Terry L. Etter

Terry L. Etter (0067445), Counsel of Record
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Telephone: (614) 466-7964 (Etter direct)
terry.etter@occ.ohio.gov
(willing to accept service by e-mail)

/s/ Michael Walters

Michael Walters (0068921), Counsel of Record
Legal Hotline Managing Attorney
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, Ohio 45237
Telephone: (513) 458-5532
mwalters@proseniors.org
(willing to accept service by e-mail)

/s/ Peggy P. Lee

Peggy P. Lee (0067912), Counsel of Record
Senior Staff Attorney
Southeastern Ohio Legal Services
964 East State Street
Athens, Ohio 45701
Telephone: 740-594-3558
plee@oslsa.org
(willing to accept service by e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra Application for Rehearing was served on the persons stated below via electronic transmission this 15th day of May 2017.

/s/ Terry L. Etter

Terry L. Etter
Assistant Consumers' Counsel

SERVICE LIST

William.wright@ohioattorneygeneral.gov
glpetrucci@vorys.com
smhoward@vorys.com

Patrick.crotty@cinbell.com
Jk2961@att.com
mo2753@att.com
dt1329@att.com
selisar@mwncmh.com
mpritchard@mwncmh.com
matthew.myers@upnfiber.com
glenn.richards@pillsburylaw.com
cblend@porterwright.com
dhart@douglasshart.com
david.vehslage@verizon.com
BarthRoyer@aol.com

Attorney Examiners:
Jay.agranoff@puc.state.oh.us
Jeffrey.jones@puc.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

5/15/2017 5:18:29 PM

in

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

Summary: Memorandum Memorandum Contra OCTA's Application for Rehearing by Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, Pro Seniors, Inc. and Southeastern Ohio Legal Services electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.