

**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 OF THE OHIO TELECOM ASSOCIATION OPPOSING THE THIRD
APPLICATION FOR REHEARING BY APPALACHIAN PEACE AND JUSTICE NETWORK,
COMMUNITIES UNITED FOR ACTION, EDMONT NEIGHBORHOOD COALITION,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL, AND PRO SENIORS, INC.**

Scott E. Elisar (Reg. No. 0081877)
(Counsel of Record)
Frank Darr (Reg. No. 0025469)
McNees Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
(614) 719-2850 (Direct Dial – Scott Elisar)
(614) 469-4653 (Fax)
selisar@mwncmh.com
(willing to accept service via email)
fdarr@mwncmh.com
(willing to accept service via email)

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ON BEHALF OF THE OHIO TELECOM ASSOCIATION

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I. INTRODUCTION

R.C. 4927.10 provides that the prohibition against abandoning basic local exchange service and the obligation to provide such service to all persons in a service exchange shall not apply to an incumbent local exchange carrier ("ILEC") after the Federal Communications Commission ("FCC") adopts an order with regard to that exchange that allows the ILEC to withdraw the interstate access component of its basic local exchange service under Section 214 of Title 47 of the United States Code.

To implement R.C. 4927.10, the Public Utilities Commission of Ohio ("Commission") adopted an amendment to the rule permitting termination of service that provides that an ILEC shall file a copy of the FCC order with the Commission in a notice to withdraw basic local exchange service for the exchange from its tariff. Finding and Order, Attachment A at 36 (Nov. 30, 2016) (Rule 4901:1-6-21(B)(1)). This notice then triggers a review process to determine if any customer lacks reasonably and comparatively priced voice service, and remedies if such a customer is found. *Id.* at 36-38.

In its Fourth Entry on Rehearing, the Commission rejected an assignment of error by Appalachian Peace and Justice Network, Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc. (collectively "OCC") that sought to delay the notice filing with the Commission by requiring the ILEC to file a "final" FCC order. Fourth Entry on Rehearing at 12.¹ Unsatisfied by the Commission's decision, OCC now argues that the Commission should clarify that the ILEC may not begin the process for withdrawing service until the "effective date of the FCC order."² Third Application for Rehearing by Appalachian Peace and Justice Network, Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc., Memorandum in Support at 5 (Sept. 8, 2017) ("OCC's Application for Rehearing").

OCC's Application for Rehearing does not demonstrate that the Commission's decision to allow an ILEC to begin the notice process is unlawful or unreasonable. R.C. 4903.10. First, the clarification that OCC seeks does not comply with the requirements of R.C. 4927.10. Second, OCC's argument does not demonstrate that the Commission's application of the statutory requirements of R.C. 4927.10 is unreasonable. Because OCC has failed to state "sufficient reasons," the Commission should deny OCC's Application for Rehearing. R.C. 4903.10.

¹ Southeastern Ohio Legal Services and the Legal Aid Society of Southwest Ohio LLC also were parties to the prior application for rehearing of OCC that the Commission addressed in the Fourth Entry on Rehearing. Application for Rehearing by Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Services, Inc., and Southeastern Ohio Legal Services (Dec. 30, 2016).

² OCC does not define what it means by "process." Since the rule provides for notification that then triggers the period during which a customer may petition the Commission and the Commission may consider a report from the related collaborative process, it is assumed that that is the "process" that OCC is referring to.

A. The clarification that OCC seeks does not comply with the requirements of R.C. 4927.10

OCC's argument in support of rehearing does not address the statutory requirements of R.C. 4927.10. Instead, it is based on the claim that the Commission's compliance with the statutory requirements may lead to a premature withdrawal of service to an at-risk customer because the FCC may adopt the required order but delay its effective date. OCC's Application for Rehearing, Memorandum in Support at 1. On statutory grounds alone, however, the Commission should deny OCC's Application for Rehearing.

R.C. 4927.10 provides that an ILEC is relieved of the prohibition against withdrawing basic local exchange service under R.C. 4927.07(D) and the requirement to provide basic local exchange service to all persons in its service area as required by R.C. 4927.11(A) with regard to an exchange area if the FCC has adopted an order permitting the ILEC to withdraw the interstate-access component of its basic local exchange service. The statute further provides that the ILEC must provide a 120-day notice to the affected customers. R.C. 4927.10(A)(1). During the 120-day notice period, a residential customer may petition the Commission no later than 90 days before the effective date of the withdrawal and indicate that he lacks reasonable and comparatively priced voice service, and the Commission may order the withdrawing ILEC to provide reasonable and comparatively priced voice service to serve that customer if the Commission determines that such service is not available to the customer's residence. R.C. 4927.10(B). If reasonable and comparatively priced voice service remains unavailable, the Commission may extend the order to provide voice service, potentially indefinitely. *Id.*

In this rulemaking proceeding, the Commission amended its rule governing withdrawal of service to provide that the ILEC is required to file a notice for the withdrawal of basic local exchange service. The rule further provides that the ILEC must provide a copy of the FCC order that allows the ILEC to withdraw the interstate component of basic local exchange service as part of the notice. Finding and Order, Attachment A at 36 (Nov. 30, 2016) (Rule 4901:1-6-21(B)(1)).

In its Third Application for Rehearing, OCC argues that the Commission should clarify that the ILEC may not begin the process for withdrawing service until the “requisite FCC order becomes effective.” OCC’s Application for Rehearing, Memorandum in Support at 1. Noting that the FCC may issue orders with effective dates different than the date the order is adopted, it argues that “it is important that the process for withdrawing customer’s basic service does not begin prematurely.” *Id.*

OCC’s clarification would not comply with R.C. 4927.10. Under that section, the triggering event that relieves an ILEC of its obligation to provide basic local exchange service and lifts the prohibition against the withdrawal of that service is when the FCC “*adopts* an order that allows the incumbent local exchange carrier to withdraw the interstate component of its basic local exchange service.” (Emphasis added.) Subsection (A) then repeats that the starting date when the requirements of R.C. 4927.07 and 4927.11 do not apply as “beginning when the [FCC] order is *adopted*,” subject to the 120-day notice. *Id.* (emphasis added). There is nothing in the plain meaning of the statute that would permit the Commission to delay the withdrawal process until the FCC’s order is effective, if that date is different than the adoption date.

The distinction between an “adoption” date and an “effective” date is material because of FCC practice. For example, the FCC “adopted changes to its rules to clarify the responsibilities of video programmers and video programming distributors with respect to the delivery and quality of closed captions for television programming. On August 26, 2016, the FCC announced that these rules will become effective on September 22, 2016.” FCC Announces Effective Date of Certain Rules Adopted in the Closed Captioning Responsibilities Order (Aug. 30, 2016) (viewed at <https://www.fcc.gov/fcc-announces-effective-date-certain-rules-adopted-closed-captioning-responsibilities-order>).

In the case of a withdrawal of service, the FCC may adopt such an order only upon a finding that “neither the present nor future public convenience and necessity will be adversely affected thereby.” 47 U.S.C. § 214(a). Once the FCC has “adopted” the order permitting the ILEC to withdraw the interstate component of service, the ILEC is relieved from the provision of basic local exchange service, subject to the 120-day notice. The Commission is without authority to upend this legislative structure for withdrawing basic local exchange service by altering the plain meaning of R.C. 4927.10. *In re Application of Columbus S. Power Co.*, 128 Ohio St. 3d 512, 520 (2011).

B. OCC’s argument that the Commission should delay the notice process under R.C. 4927.10 until the FCC order is effective does not demonstrate that the notice process set out in the current proposed rule is unreasonable

As noted previously, OCC asserts that the adoption dates and the effective dates of FCC orders may be different to support its claim that the “process” for seeking relief from the requirement to provide basic local exchange service may be premature. That

timing difference, however, does not drive a conclusion that a notice prior to the effective date of an FCC order is unreasonable.

Initially, state law will provide for an extended review process to protect an adversely affected customer if there is one. The customer will be provided the statutorily-required 120-day notice. Further, if the customer is at risk because there is no willing provider of service, the Commission can direct the withdrawing carrier to provide a reasonable and comparatively priced voice service to the customer's residence. R.C. 4927.10(B)(1)(b). Thus, the difference in dates does not place the customer at risk if the focus of OCC's concern is harm to the customer.

Moreover, the FCC will have already decided that "neither the present nor future public convenience and necessity will be adversely affected" by withdrawal of the interstate portion of the service. As a result, the notice process at the state level cannot proceed until a separate federal agency has concluded that the withdrawal of service is not unduly harmful.

The state notice and petition requirements, the ability of the Commission to direct an ILEC to provide a reasonable and comparatively priced voice service if no willing provider is identified, and the federal review process protect a residential customer in an exchange that ILEC seeks to withdraw basic local exchange. None of these consumer protections changes if the withdrawal process begins with the adoption date of the FCC order rather than the effective date of the order. Because the consumer protections remain unchanged, OCC's complaint that the process may start prematurely does not demonstrate any harm will be caused to customers by the Commission's proposed process or state a sufficient reason for granting rehearing.

II. CONCLUSION

The ILEC's requirement to provide basic local exchange service ends in a service exchange when the FCC adopts an order that allows the ILEC to withdraw the interstate component of its basic local exchange service and the 120-day notice period ends. Given the consumer protections already provided by federal and Ohio law, there is no lawful or reasonable basis for delaying the process for noticing the withdrawal of service. Accordingly, the Commission should deny OCC's Application for Rehearing.

Respectfully submitted,

/s/ Scott E. Elisar

Scott E. Elisar (Reg. No. 0081877)

(Counsel of Record)

Frank Darr (Reg. No. 0025469)

McNees Wallace & Nurick LLC

21 E. State Street, 17th Floor

Columbus, Ohio 43215

(614) 719-2850 (Direct Dial – Scott Elisar)

(614) 469-4653 (Fax)

selisar@mwncmh.com

(willing to accept service via email)

fdarr@mwncmh.com

(willing to accept service via email)

ATTORNEYS FOR THE OHIO TELECOM ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Memorandum of The Ohio Telecom Association Opposing the Third Application for Rehearing by Appalachian Peace and Justice Network, Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc.*, was served upon the following parties of record this 18th day of September 2017, *via* electronic transmission, hand-delivery or first class U.S. mail, postage prepaid.

/s/ Scott E. Elisar

Scott E. Elisar

Douglas W. Trabaris
Mark Ortlieb
AT&T Ohio
225 West Randolph Street, Floor 25D
Chicago, Illinois 60606
Dt1329@att.com
mark.ortlieb@att.com

On Behalf of AT&T Services, Inc.

Gretchen Petrucci
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43216
glpetrucci@vorys.com
smhoward@vorys.com

**On Behalf of the Ohio Cable
Telecommunications Association**

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

**On Behalf of Cincinnati Bell
Telephone Co. LLC**

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

**On Behalf of Edgemont Neighborhood
Coalition**

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

**On Behalf of Communities United for
Action**

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

**On behalf of CTIA-The Wireless
Association®**

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

**On Behalf of United Telephone
Company of Ohio d/b/a CenturyLink
and CenturyTel of Ohio, Inc. d/b/a
CenturyLink**

Bruce J. Weston
Ohio Consumers' Counsel
Terry L. Etter
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, Ohio 43215
Terry.etter@occ.ohio.gov

**On Behalf of the Office of the Ohio
Consumers' Counsel**

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

**On Behalf of the Ohio Poverty
Law Center**

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

On Behalf of Pro Seniors, Inc.

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

**On Behalf of Appalachian Peace and
Justice Network**

William Haas
T-Mobile
2001 Butterfield Rd.
Downers Grove, Illinois 60515
William.haas@t-mobile.com

On Behalf of T-Mobile

Kathy L. Buckley
Verizon
1500 MacCorkle Ave., Box 3
Charleston, WV 25304
kathy.l.buckley@verizon.com

On Behalf of Verizon

Glenn S. Richards
Voice On The Net Coalition
1200 Seventeenth St., NW
Washington, D.C. 20036
Glenn.richards@pillsburylaw.com

**On Behalf of Voice On The Net
Coalition**

Jeff Jones
Jay Agranoff
Attorney Examiners
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, Ohio 43215
Jeffrey.jones@puc.state.oh.us
Jay.agranoff@puc.state.oh.us

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