

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S  
REVIEW OF CHAPTER 4901:1-6 OF THE OHIO  
ADMINISTRATIVE CODE, REGARDING  
TELEPHONE COMPANY PROCEDURES AND  
STANDARDS.

CASE NO. 14-1554-TP-ORD

FIFTH ENTRY ON REHEARING

Entered in the Journal on October 4, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed collectively by Edgemont Neighborhood Coalition, Communities United for Action, Appalachian Peace and Justice Network, The Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc.

II. DISCUSSION

A. *Applicable Law*

{¶ 2} Pursuant to R.C. 106.03(A) and R.C. 111.15, all state agencies are required to conduct a review every five years of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.

{¶ 3} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

B. *Procedural History*

{¶ 4} On September 4, 2014, the Commission opened Case No. 14-1554-TP-ORD (*Retail Rules Case*), *In re the Commission's Review of Chapter 4901:1-6 of the Ohio Administrative Code, Regarding Telephone Company Procedures and Standards*, for the purpose of commencing the five-year review of the rules contained in Ohio Adm.Code Chapter 4901:1-6.

{¶ 5} Pursuant to its November 30, 2016 Finding and Order (Finding and Order) in the *Retail Rules Case*, the Commission adopted administrative rules regarding telephone company procedures and standards. Consistent with the Finding and Order, some rules were identified as no change rules, some were identified as amended rules, and one was identified as a new rule.

{¶ 6} On December 30, 2016, AT&T Ohio; Ohio Cable Telecommunications Association (OCTA); the Ohio Telecom Association (OTA); and Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel (OCC), Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (jointly, Consumer Groups); filed applications for rehearing of the Finding and Order.

{¶ 7} On January 9, 2017, AT&T Ohio, OCTA, OTA, and Consumer Groups each filed a memorandum contra the applications for rehearing.

{¶ 8} On January 25, 2017, the Commission issued its Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

{¶ 9} On April 5, 2017, the Commission issued its Second Entry on Rehearing granting some and denying some of the assignments of error set forth in the applications for rehearing.

{¶ 10} On May 5, 2017, OCTA and Consumer Groups<sup>1</sup> filed applications for rehearing of the Commission's April 5, 2017 Second Entry on Rehearing.

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<sup>1</sup> The entities include Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services.

{¶ 11} On May 15, 2017, AT&T Ohio and OCTA filed memorandum contra Consumer Groups' application for rehearing.

{¶ 12} On May 15, 2017, Consumer Groups filed a memorandum contra OCTA's application for rehearing.

{¶ 13} On May 24, 2017, the Commission issued its Third Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

{¶ 14} On August 9, 2017, the Commission issued its Fourth Entry on Rehearing, which among other things, granted in part and denied in part OCTA's application for rehearing.

{¶ 15} On September 8, 2017, Consumer Groups<sup>2</sup> filed an application for rehearing of the Commission's August 9, 2017 Fourth Entry on Rehearing.

{¶ 16} On September 18, 2017, AT&T Ohio and OTA each filed a memorandum contra Consumer Groups' application for rehearing.

### **C. *Assignment of Error***

{¶ 17} In its application for rehearing, Consumer Groups assert that the Commission's decision is unreasonable because "it could allow the process for a telephone company to withdraw consumers' basic service under R.C. 4927.10(A) to begin before the effective date of the FCC order providing the necessary authorization to withdraw basic service under the statute" (Consumer Groups' Third Application for Rehearing at 2). In support of its position, Consumer Groups note that different types of proceedings at the FCC have different effective dates and that orders are not automatically effective upon

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<sup>2</sup> The entities include Appalachian Peace and Justice Network, Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, and Pro Seniors, Inc.

issuance (Consumer Groups' Third Application for Rehearing Memorandum in Support at 1).

{¶ 18} According to Consumer Groups, relative to a non-rulemaking proceeding that requires a decision by the full FCC, such orders are generally effective on the date of the public notice of such action. However, the FCC may, on its own motion or on a motion of any by any party, designate an effective date that is either earlier or later than the date of public notice of such action. (Consumer Groups' Third Application for Rehearing Memorandum in Support at 3.) Additionally, Consumer Groups note that, consistent with 47 C.F.R. 1.102(a)(1), if a decision is not voted on by all of the FCC commissioners (delegated authority), the effective date of the decision is delayed by 40 days (Consumer Groups' Third Application for Rehearing Memorandum in Support at 4).

{¶ 19} Consumer Groups further submit that the record does not indicate which of the FCC rules concerning effective dates would apply to an FCC order granting a telephone company the authority to withdraw the interstate access portion of its basic service. Therefore, Consumer Groups state that it was unreasonable for the Commission to simply allow the process for withdrawing customers' basic local exchange service (BLES) to begin upon issuance of an FCC order. According to Consumer Groups, the Commission should instead clarify that the process for withdrawing customers' BLES should not begin until the effective date of the FCC order allowing an incumbent local exchange carrier ILEC to remove the interstate access component of its basic service. (Consumer Groups' Third Application for Rehearing Memorandum in Support at 4-5.)

{¶ 20} AT&T Ohio rejects Consumer Groups' assignment of error. In response to Consumer Groups' application for rehearing, AT&T Ohio responds that the Commission, in its Second Entry on Rehearing, determined that a written FCC decision is necessary for the purpose of certainty as to the formal action taken by the agency. (AT&T Ohio Memorandum Contra at 2 citing Second Entry on Rehearing, ¶67). AT&T Ohio also highlights that the Commission in its Fourth Entry on Rehearing held that the triggering

event for the commencement of the process for an ILEC's abandonment of BLES is the issuance of an FCC order (AT&T Ohio Memorandum Contra at 2 citing Fourth Entry on Rehearing, ¶36). According to AT&T Ohio, focusing on the "effective date" of FCC action as a trigger will only lead to uncertainty and delay. Further, AT&T Ohio submits that the Commission chose to interpret state law to require the issuance of a written FCC decision as the trigger for relief under state law. As a consequence of this decision, AT&T Ohio emphasizes that neither the statute nor any Commission interpretation refers to the effective date of the FCC action. (AT&T Ohio Memorandum Contra at 2.)

{¶ 21} OTA responds that the clarification sought by Consumer Groups does not comply with the requirements of R.C. 4927.10 inasmuch as the statute does not require an effective FCC Order but, instead, only requires that the FCC adopt an order permitting the ILEC to withdraw the interstate-access component of its BLES (OTA Memorandum Contra at 4).

{¶ 22} Further, OTA points out that in this rulemaking proceeding, the Commission amended its rule governing the withdrawal of service to provide that, among other things, the ILEC is required to provide a copy of the FCC order that allows the ILEC to withdraw the interstate component of BLES as part of the notice to the customer. According to OTA, once the FCC has adopted the order permitting the ILEC to withdraw the interstate component of BLES, the ILEC is relieved from the provision of BLES, subject to the requisite 120-day notice. Further, citing *In re Application of Columbus Southern Power Company*, 128 Ohio St. 3d 512, 520 (2011), OTA submits that the Commission is without authority to upend the legislature's structure for withdrawing BLES by altering the plain meaning of R.C. 4927.10. (OTA Memorandum Contra at 5.)

{¶ 23} Additionally, OTA asserts that Consumer Groups' 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 forth in the current proposed rule is unreasonable. Specifically, OTA emphasizes that the current 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 existing FCC review process protect a residential customer in an exchange for which the ILEC seeks to withdraw BLES. According to OTA, none of these consumer protections change if the withdrawal process begins with the adoption date of the FCC order rather than the effective date of the order. Therefore, OTA opines that, due to its belief that consumer protections will remain unchanged, Consumer Groups' contention that the BLES withdrawal process may begin prematurely does not demonstrate any harm will be caused to customers or state a sufficient reason for granting rehearing. (OTA Memorandum Contra at 5-6.)

{¶ 24} With respect to Consumer Groups' assignment of error, the Commission finds that the application for rehearing should be denied inasmuch as the issue set forth in the application for rehearing is beyond the 30-day rehearing period permitted pursuant to R.C. 4903.10. Specifically, the Commission points out that although the language in approved Ohio Adm.Code 4901:1-6-21(B)(1) relative to the required FCC Order appeared as early as the rules attached to the November 30, 2016 Finding and Order, Consumer Groups did not raise their concerns as to the effective date of the FCC Order until their application for rehearing of September 8, 2017. Therefore, in order to have been properly raised on rehearing, this issue should have identified earlier in this proceeding. Notwithstanding this procedural determination, the Commission clarifies that its decisions relative to approved Ohio Adm.Code 4901:1-6-21(B)(1) in both its Second Entry on Rehearing and Fourth Entry on Rehearing in this proceeding are premised on the existence of an effective FCC Order.

### III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the application for rehearing of Consumer Groups be denied as set forth above. It is, further,

{¶ 27} ORDERED, That, to the extent not specifically addressed herein, all other arguments raised in the application for rehearing are denied. It is, further,

{¶ 28} ORDERED, That a copy of this Fifth Entry on Rehearing be served upon all commenters of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO




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Asim Z. Haque, Chairman

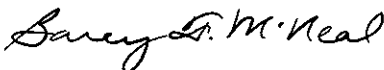
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Barcy F. McNeal  
Secretary