

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Commission's Implementation :
of Substitute House Bill 402 : Case No. 19-173-TP-ORD
of the 132nd Ohio General :
Assembly. :

- - -

PROCEEDINGS

before Mr. Jay S. Agranoff, Attorney Examiner, at the
Public Utilities Commission of Ohio, 180 East Broad
Street, Room 11-B, Columbus, Ohio, called at 10:00
a.m. on Thursday, February 7, 2019.

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PANEL MEMBERS:

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Jason Well

Robin Russell

Michelle Green

Michael Twiss

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Thursday Morning Session,
February 7, 2019.

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EXAMINER AGRANOFF: Good morning. The PUCO has called for workshop at this time and place, Case No. 19-173-TP-ORD, captioned "In the Matter of the Commission's Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly."

My name is Jay Agranoff, and I am one of the Attorney Examiners assigned by the Commission to hear this case.

Joining me today, as I mentioned previously, are members of the Commission's Rates and Analysis Department, including Telecom Section Chief Marianne Townsend, Jason Well, Robin Russell, Michelle Green, and Mick Twiss. Also with me, to my right, is Jeff Jones, Chief of the Telecom Section of the Legal Department.

Today we will be moderating the workshop as well as taking notes of the comments that are offered for the Commission's consideration in this matter.

I have a sign-in sheet which is on the table over by the door to my left, your right, and I would appreciate it if you signed in at some point by

1 the end of today's workshop.

2 Before we begin taking the comments that
 3 you'll be offering, I'd like to give an overview of
 4 the workshop that is being held today. Specifically,
 5 the 132nd Ohio General Assembly adopted Substitute
 6 House Bill 402, that, among other things, directed
 7 the Commission to adopt rules that permit incumbent
 8 local exchange companies to increase rates for basic
 9 local exchange service by up to \$2 on an annual
 10 basis.

11 The Substitute House Bill also requires
 12 the Commission Staff to docket a report, no later
 13 than three years after the effective date of the
 14 legislation, to examine the number of exchange lines
 15 in service, the aggregate amount of line loss in the
 16 State of Ohio since the bill was enacted, and the
 17 change in price for those services in each exchange
 18 area since the effective date of the legislation.

19 The Commission is ultimately required to
 20 submit a report to the standing committees in both
 21 the House of Representatives and the Senate.
 22 Additionally, no earlier than four years from the
 23 effective date of the legislation, an incumbent local
 24 exchange company may apply for an exemption of the
 25 price cap requirements for basic local exchange

1 service. The legislation also exempts telephone
2 companies from treble damages and limits the
3 Commission's ability to consider domestic telephone
4 company change-of-control applications.

5 As part of the Common Sense Initiative,
6 it is appropriate for the Commission to hold a
7 workshop with interested stakeholders as part of the
8 rulemaking process. Therefore, the purpose of
9 today's workshop is to receive your input regarding
10 the rules required by House Bill 402. The workshop
11 is merely your initial opportunity to offer your
12 recommendations and is not intended to serve as a
13 substitute for the Commission's formal comment
14 process.

15 After the workshop, the Commission will
16 be issuing, for comment, its proposed rules and, at
17 that time, the interested stakeholders may submit
18 their written comments and reply comments for the
19 Commission's consideration.

20 I would note that for the purposes of
21 this proceeding, we'll be working from the existing
22 rules that have been previously filed with the Joint
23 Committee on Agency Rule Review. Therefore, we will
24 not be relying on the Chapter 6 rules that may have
25 been approved by the Commission in Case No.

1 14-1554-TP-ORD but were not final-filed with JCARR.

2 In regards to the specific rules impacted
3 by Substitute House Bill 402, Staff has initially
4 identified Rules 1, 6, 7, 14, 29, and 30 as requiring
5 amendment. The proposed amendments will be
6 identified in an upcoming Commission entry that will
7 be issued in the near future.

8 At this time, the interested stakeholders
9 will have the opportunity to identify those rules
10 which they believe require amendment as a result of
11 Substitute House Bill 402.

12 I would note that this workshop is being
13 transcribed by a court reporter and is also being
14 provided over webcast. Nothing said in this workshop
15 will be considered as binding on any of the
16 stakeholders.

17 To the extent that you're interested in
18 providing comments, I would ask that you come up to
19 the front to the table right over here by where the
20 court reporter is sitting and, at that time, please
21 provide your name, your affiliation of who you're
22 representing, in order that the record is clear.
23 Also, if you have prepared a written statement, it
24 would be helpful if you provide a copy of such
25 statement to both the Commission Staff and the court

1 reporter.

2 Before we begin, are there any questions
3 or other input from Staff that you feel is necessary
4 to be shared at this time?

5 Okay. If not, then why don't we get
6 started at this point in time, and if the first
7 individual that would like to provide input to the
8 Commission, please come up and do so.

9 MR. KELLY: Your Honor, thank you,
10 Examiner Jones, Staff Members. I'm Jon Kelly. I'm
11 here today representing the AT&T regulated entities
12 in Ohio -- excuse me -- primarily in this case, AT&T
13 Ohio, the ILEC.

14 I promised the reporter we would minimize
15 the use of acronyms here today. I'm not sure that
16 will work.

17 We put together a redline which I've
18 shared with a few of the Staff members that really
19 just reflects AT&T's preliminary thoughts about the
20 rule changes that should be made as a result of the
21 passage of House Bill 402. I understand, Your Honor,
22 it might be attached or filed in the docket; we're
23 fine with that. I do want to emphasize, though, as
24 you said in your initial comments, AT&T isn't bound
25 by those preliminary thoughts. Our opinions may

1 change as the docket unfolds.

2 We've identified six rules that are in
3 need of change. A slightly different list than you
4 mentioned. We hit a few of the same ones. I think
5 we missed a few that the Staff might have identified
6 changes in. And rather than go through the draft
7 that we've circulated which is actually quite
8 extensive, I thought I would just hit the high
9 points, summarizing the changes we propose be made in
10 the six rules.

11 Our first one is Rule 7. That's the rule
12 governing customer notice. There, of course, is a
13 statutory change there, and our changes basically
14 just track the change made in the statute.

15 I do have a pending question about this
16 one. The legislation added the concept of notice to
17 wholesale customers; that, of course, should probably
18 be reflected in this rule, but we also noted a
19 question that perhaps a provision like that or a
20 similar provision should be included in the
21 carrier-to-carrier rules which, of course, addresses
22 the wholesale relationships between the companies.
23 Rule 2, in the carrier-to-carrier rules, might be a
24 possible repository for that change.

25 There's a very minor change that we see

1 as appropriate in Rule 12 and it's a minor edit to
2 reflect the change in the statutory policy provision
3 that's in 4927.02. One word would be eliminated and
4 I believe it's "available." And that's a result not
5 only of this legislation but also a result, some time
6 in the future, of the enactment of the COLR Relief
7 legislation. Another acronym, C-O-L-R.

8 Rule 14. Probably the most-extensive
9 changes appear in that rule. This is the BLES
10 pricing-parameters rule. And we tried to track, as
11 closely as we could, the statutory language in the
12 context of the existing rule.

13 And you mentioned going forward, Your
14 Honor, the process that will roll out here in the
15 three- to four-year time frame. One of the
16 requirements of that process will be that the ILECs
17 demonstrate line loss, access line loss, between I
18 believe it's 2001 and that date in the future.

19 It's not part of the rules, but just to
20 note for the record and plant the seed in everybody's
21 mind, I think it would be useful for the Commission
22 to look at requiring access line counts to be filed
23 in the telephone company annual reports as they were
24 many years ago. I remember very thick annual
25 reports, say 10 and more years ago, that listed all

1 kinds of statistics, by exchange, for every company.
 2 So you could look up and see how many residential
 3 access lines were in the Radnor exchange, for
 4 example, how many business access lines. Those line
 5 counts were used very effectively, I think, in the
 6 original BLES pricing flexibility cases. So it's
 7 something to look at.

8 Whether every company needs to file that,
 9 whether you should start filing it if you plan to
 10 exercise the right for that flexibility, that might
 11 be another way to look at it, but at some point that
 12 line loss information will need to be collected. I
 13 would suggest probably available for public
 14 inspection. I question the confidentiality of
 15 generic information like that, but it also needs to
 16 be consistent with the count for the start of the
 17 time period. The 2001 count is going to be line
 18 loss -- line count information from, I believe, the
 19 2001 annual report.

20 Our next rule that we touched on in the
 21 redline is the lifeline rule. The statute is very
 22 limited on this subject. It basically says the
 23 Commission should look at the lifeline rule and make
 24 it consistent with the federal program or the federal
 25 requirements. So we've taken a stab, if you will, at

1 doing that in the rule.

2 There's one change that was made in the
3 statute a couple of years ago, in the budget bill,
4 that I see is not reflected in the current rule, and
5 I forget if that was part of the rulemaking docket
6 that you referred to, Your Honor. There was
7 reference -- there was reference in the statute to
8 flat rate service. That was removed. Flat rate
9 service is no longer a requirement. The rule still
10 reflects that. So this is a change really to synch
11 up not just with House Bill 402 but the bill in which
12 that change to the lifeline statute was enacted, I
13 think it was two years, 2017, in the budget bill of
14 that year, House Bill 49.

15 Rule 29 is the next rule which we touched
16 on. This is the rule on company changes in
17 operations, and we've made an attempt here to include
18 the language changes and the process changes
19 applicable to telephone company mergers and
20 acquisitions. We borrowed substantially from the
21 statutory provisions in doing that.

22 Rule 30, another of the ones I believe
23 you identified. The plant inspection language.
24 Again, we simply incorporated the statutory language
25 from the new law in that provision.

1 That's my summary of our six rule
2 changes. The details are in the redline, but I would
3 be happy to answer any questions you might have.

4 EXAMINER AGRANOFF: Any questions from
5 Staff?

6 MS. TOWNSEND: Let's see here. Let's
7 take a look here for a minute.

8 On the -- Jon -- excuse me.

9 Marianne Townsend, I'm asking this
10 question.

11 Jon, when you mentioned the annual
12 reports and the access line loss, and I don't recall
13 because I wasn't here in 2001, so was -- in those
14 annual reports, I know that access lines were
15 reported, but were they reported by exchange? Is
16 that what you were saying?

17 MR. KELLY: They were, yes.

18 MS. TOWNSEND: Okay. So you're proposing
19 that that might be something that the Commission
20 would look at is basically putting that back into
21 effect as far as, you know, the way it was, the
22 exchange and the lines listed at that time.

23 MR. KELLY: Yeah, that's certainly one of
24 the options. I think the statutory language
25 contemplates exchange-based --

1 MS. TOWNSEND: Yes.

2 MR. KELLY: -- relief.

3 MS. TOWNSEND: It did, yes.

4 MR. KELLY: So if a company, for example,
5 just wants the relief in half of their exchanges,
6 you're going to need that information on an
7 exchange-specific basis at some point. I wouldn't
8 suggest that be done right away. I think I mentioned
9 this, that this is a process that's not going to
10 begin now for in the range of three to four years.
11 It's the fourth anniversary, I recall, that a company
12 can apply for the pricing relief.

13 MS. TOWNSEND: Okay. Thank you.

14 As far as the other requirements of the
15 report that were contemplated by law regarding
16 percentage of increases per exchange or, you know,
17 overall, do you have any thoughts on that, of how
18 that would be tracked?

19 MR. KELLY: Yeah. I think we would want
20 to get our subject-matter experts --

21 MS. TOWNSEND: Okay.

22 MR. KELLY: -- at a table, perhaps, with
23 you and your staff, just to talk that through, how
24 that data can be collected and submitted. I don't
25 think, off the top of my head, that necessarily needs

1 to be in a rule.

2 MS. TOWNSEND: Right, it doesn't, but it
3 would be part of, from my understanding, it would
4 part of that report that's sent to the General
5 Assembly.

6 MR. KELLY: General Assembly, I agree.

7 MS. TOWNSEND: Okay. Thank you.

8 MR. KELLY: Thank you.

9 EXAMINER AGRANOFF: Thank you, Mr. Kelly.

10 MR. ELISAR: Thank you, Mr. Chairman.

11 I'm Scott Elisar on behalf of the Ohio
12 Telecom Association.

13 The Ohio Telecom Association greatly
14 appreciates the work of Staff in this process. The
15 Ohio Telecom Association, or OTA, will be gathering
16 shortly to participate in the comment process.
17 However, at this time, we have not yet had the
18 opportunity to meet to make formal comments in this
19 process. That being said, we obviously appreciate
20 the efforts of AT&T, a member of the OTA, and their
21 proposed revisions. We look forward to working both
22 with AT&T and the other members of the association to
23 come forward with comments as that process continues.
24 Thank you, and I'd be happy to take any questions

25 EXAMINER AGRANOFF: Any questions from

1 Staff?

2 MS. TOWNSEND: No.

3 EXAMINER AGRANOFF: You may step down,
4 sir.

5 MR. ELISAR: Thank you very much.

6 MS. PETRUCCI: Good morning. I'm
7 Gretchen Petrucci. I'm here on behalf of the Ohio
8 Cable Telecommunications Association. We have taken
9 a close look at House Bill 402 and there are some
10 suggestions that we wanted to bring forward for you
11 today.

12 And I'll just start with Rule 1 which you
13 had identified as well earlier. Our recommendation
14 for Rule 1, which is the definition rule, is to
15 include a new definition for incremental costs. In
16 House Bill 402, Section 4927.12(A), there was a
17 requirement that incremental costs be defined by the
18 Commission, and our suggestion is that the Commission
19 follow what it has, in fact, previously used which is
20 long-run service incremental cost, and mandate that
21 the BLES prices for the ILECs can't fall below the
22 long-run service incremental cost plus a common cost
23 allocation for forward-looking joint costs.

24 And I'll just point you to prior cases of
25 the PUCO at Case No. 05-1305-TP-ORD and

06-1345-TP-ORD and, at that time, the Commission had considered the long-run service incremental cost as the forward-looking economic cost for a new or existing product that is equal to the per unit cost of increasing the volumetric production from zero to a specified level as well as other products -- while the other products remain constant.

We consider that to be something the Commission's already looked at. We think that it would be appropriate to incorporate in the new set of rules that you're developing at this point. We also believe that having that definition is important to protect against cross-subsidization between different service offers. Again, also protect against price squeezes and any other anti-competitive behaviors. And so, that's our first suggestion for you.

The next suggestion would be for the Commission's Rule 14 which was also identified and discussed a little earlier. This is with regard to the BLES rate adjustments and it's our suggestion that those applications that are filed by the ILECs would include a demonstration that if they decrease the rate, that that decrease does not fall below the ILEC's incremental cost as defined by the Commission.

We also believe that if the Staff is

1 looking at that rate adjustment decrease and after
2 the adjustment takes effect, so, for instance, if it
3 was a zero-day filing, we also suggest that the rules
4 reflect that any downward adjustment be subject to
5 refund if it was found to fall below the incremental
6 cost floor.

7 The House Bill 402 envisions those
8 exemption application filings which you'd referenced
9 earlier, and we also think that Rule 14 would be an
10 appropriate spot for addressing those exemption
11 applications, and we're recommending that a new case
12 code be developed so that it's -- as a practical
13 matter, you can identify those applications a little
14 more readily from many of the other rate application
15 adjustments that you receive.

16 We, again, would suggest that for those
17 exemption applications, there be minimum contents
18 required that if -- includes a price decrease that
19 the -- demonstrate -- the application information
20 would include a demonstration that the price decrease
21 does not fall below incremental cost, that floor.
22 And then we also think that there's an important
23 piece to this would be that a customer notice be
24 included with the exemption application. So those
25 are some of our suggestions specifically for Rule 14.

1 Our next suggestion is with regard to
2 Rule 29. This is the merger change and control rule
3 that exists. And with the new process that House
4 Bill 402 has now authorized, we are going to
5 recommend that the notice that's required by House
6 Bill 402 be filed with the PUCO the same day that the
7 application is filed with the FCC. We are also
8 recommending, as the statute already requires, that
9 that application -- that notice, I'm sorry, include a
10 specific link to the FCC's filing for public notice
11 immediately.

12 We also think that in this situation
13 there probably is a simple adjustment that can be
14 made to the Commission's existing telecommunications
15 filing form so that that notice filing can be
16 included in that form that you already are using
17 today, as well as a specific spot for the link to be
18 filled in when that filing is made.

19 And our last suggestion for you is with
20 regard to Rule 7 which is the customer notice rule.
21 It's already been referenced. We also think that
22 there's some modifications that need to be made to
23 this rule to correspond with House Bill 402,
24 specifically in Section A. We think that some simple
25 adjustments to mirror or pattern the statutory

1 language would be appropriate.

2 We would also recommend that the current
3 language in the rule, that does not require --
4 currently does not require customer notice for
5 decreases in rates, be modified, because we -- we're
6 suggesting that rate decreases actually can be
7 material changes for customers, retail customers as
8 well as wholesale customers, and we consider that to
9 be an important modification for Rule 7.

10 And that is the group of suggestions we
11 have for you today.

12 EXAMINER AGRANOFF: Thank you.

13 MS. PETRUCCI: Any questions?

14 EXAMINER AGRANOFF: Any questions of
15 Staff?

16 MS. TOWNSEND: Actually, I do.

17 Thanks. Thank you, Gretchen.

18 Again, this is Marianne speaking,
19 Marianne Townsend.

20 With regard to the demonstration on the
21 incremental, the decrease of the BLES rates, that's
22 what we're talking about here is the basic local
23 exchange, just the standalone, if that is decreased,
24 are you suggesting that demonstration should be a
25 full-blown cost study that is submitted to Staff on

1 every -- if there is a decrease even if it's 1 cent,
2 2 cents? I mean, I'm trying to --

3 MS. PETRUCCI: What we're suggesting at
4 this point is that if the ILEC is going to decrease
5 its rates, there is an obligation they need to
6 demonstrate that they're not falling below a floor.
7 A 1-cent, initially, may not seem like it would
8 necessarily fall below the floor. It depends on
9 where your pricing was before that adjustment. So I
10 can't say categorically that a 1-cent decrease is not
11 something they shouldn't have to demonstrate that
12 they're not falling below the floor.

13 I think the important thing is that
14 decreases are now allowed by law to fall below the
15 floor. So if they're going to come in and seek a --
16 and plan to decrease their rate, that should, at a
17 minimum, be a demonstration.

18 The details on what they have to provide
19 to do that, I think we probably can talk some more
20 and think about what needs to be presented. But if
21 there's nothing presented, then they aren't even
22 going to be demonstrating, by law, what they're not
23 allowed to do which is not fall below a particular
24 floor, so that's why we're making that suggestion.

25 MS. TOWNSEND: Okay. Thank you.

1 Anybody?

2 MR. TWISS: Gretchen, I think you
3 mentioned if a price decrease went into effect and it
4 was later determined it was below the floor, there
5 would be some kind of refund mechanism? How would
6 that work? Who would be getting refunds?

7 MS. PETRUCCI: The -- the concern that we
8 have is that if they -- well, maybe perhaps my
9 wording there with the word "refund" is over -- but
10 if they fall below the floor and are improperly doing
11 that, then there should not be a benefit that goes to
12 the company and that's really what I was trying to
13 express, because now we have this mandatory floor,
14 they should not be pricing below it.

15 EXAMINER AGRANOFF: Anything else from
16 Staff?

17 Thank you.

18 MS. PETRUCCI: Okay. Thank you very
19 much.

20 EXAMINER AGRANOFF: Anybody else
21 interested in providing comments at this time?

22 Okay. If not, we appreciate your
23 participation in this morning's workshop, and there
24 will hopefully be an entry out, sometime in the near
25 future, providing you with the opportunity to provide

formal comments with respect to any of the proposed rule changes.

We are adjourned. Thank you.

(Thereupon, the proceedings concluded at 10:30 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, February 7, 2019, and carefully compared with my original stenographic notes.

Carolyn M. Burke
Carolyn M. Burke, Registered
Professional Reporter, and
Notary Public in and for the
State of Ohio.

My commission expires July 17, 2023.

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Summary: Transcript In the Matter of the Commission's Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly, hearing held on February 7, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Burke, Carolyn