

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Implementation of Substitute)	Case No. 19-0173-TP-ORD
House Bill 402 of the 132nd Ohio)	
General Assembly.)	

**COMMENTS ON PROPOSED RULES AFFECTING OHIOANS' BASIC
TELEPHONE SERVICE**

**BY
GREATER EDMONT COMMUNITY COALITION,
THE LEGAL AID SOCIETY OF CLEVELAND,
LEGAL AID SOCIETY OF SOUTHWEST OHIO LLC,
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
OHIO ASSOCIATION OF COMMUNITY ACTION AGENCIES,
OHIO POVERTY LAW CENTER,
PRO SENIORS, INC., AND
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

This proceeding addresses the necessary consumer protections for Ohioans who use basic local telephone service. The Public Utilities Commission of Ohio ("PUCO") is implementing the provisions of Substitute House Bill 402 ("Sub. HB 402"), which was enacted on December 20, 2019. Sub. HB 402 allows telephone companies to charge customers more each year for basic telephone service and after four years, allows telephone companies to increase basic service rates to customers, with no limit on the increases.

On March 20, 2019, the PUCO issued an Entry containing draft rules offered by the PUCO Staff to implement Sub. HB 402. The Edgemont Community Coalition, The Legal Aid Society of Cleveland, Legal Aid Society of Southwest Ohio LLC, the Office of the Ohio Consumers' Counsel, Ohio Association of Community Action Agencies, Ohio

Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (collectively, “Consumer Groups”) file these Comments on the draft rules.

The draft rules include a provision (proposed Ohio Adm. Code 4901:1-6-14(G)) that will not be effective for four years. It seems premature to have a rule on the books now, when it might be changed or even eliminated by the legislature before it becomes effective in four years. The PUCO should not adopt this rule. In addition, the rule regarding mergers and acquisitions (Ohio Adm. Code 4901:1-6-29(E)(2)) is internally inconsistent and confusing. The PUCO should clarify the rule so that the public is properly notified when a telephone company files a change of ownership application at the Federal Communications Commission (“FCC”).

II. RECOMMENDATIONS

A. It is premature for the PUCO to adopt a rule now that might (or might not) go into effect in four years.

Sub. HB 402 contained a provision that allows local telephone companies to apply for PUCO approval to increase basic service charges to customers without limitation.¹ This provision does not take effect until at least four years after the effective date of Sub. HB 402 (i.e., March 20, 2023). The provision is explicit in the conditions that a telephone company must meet for attaining, and the PUCO’s process for, unlimited basic service rate increases.

The PUCO Staff has proposed including R.C. 4927.123 almost verbatim in the rules implementing Sub. HB 402. The proposed rule is Ohio Adm. Code 4901:1-6-

¹ R.C. 4927.123.

21(G).² But the PUCO should not include the entirety of R.C. 4927.123 in the rules at this time.

First, although Sub. HB 402 is now effective, no telephone company can use R.C. 4927.123 at this time. The statute itself – by its own words – does not take effect for another four years. The PUCO should not have on its books a rule that has no effect.

Second, the statute may undergo changes before its substance takes effect. Section 4(B) of Sub. HB 402 requires the PUCO to conduct a study of basic service in Ohio three years from now. The study will include the number of basic service lines in Ohio, the number of basic service lines lost by local telephone companies since the effective date of Sub. HB 402, and the change in basic service charges to customers since the effective date of Sub. HB 402. Based on this study, the PUCO is to submit a report to the legislature about six months before the substance of R.C. 4927.123 takes effect.

Third, Sub. HB 402 does not require that the entirety of R.C. 4927.123 be included in the PUCO's rules at this point. Section 3 of Sub. HB 402 requires the PUCO to “amend its rules *to the extent necessary to bring them into conformity* with this act....” (Emphasis added.) By adopting rules that have effect now, the PUCO would be in conformity with Sub. HB 402. The PUCO can postpone the adoption of rules implementing R.C. 4927.123 and still be in conformity with Sub. HB 402. The PUCO should not adopt proposed Ohio Adm. Code 4901:1-6-21(G) at this time.

If, however, the PUCO believes it necessary to implement R.C. 4927.123, it should not at this point include the detailed process found in the statute. As discussed above, the statute might be altered by the legislature four years from now, or even

² Entry, Appendix A at 11-13.

sooner.³ Thus, the R.C. 4927.123 that exists today might not exist four years hence, when it takes effect. If the PUCO adopts detailed rules now, it might have to make one or more changes to those rules before they become effective. It would be administratively efficient to abstain from including the detailed process R.C. 4927.123 in this version of the PUCO's rules.

Rather, if the PUCO determines that it must adopt a rule implementing R.C. 4927.123 now, it should not be detailed. Instead, the PUCO should adopt the following language as Ohio Adm. Code 4901:1-6-21(G):

After March 20, 2023, an ILEC may apply for an exemption from the limitations on basic local exchange service price increases in paragraph (C) of this rule for any exchange meeting the standards found in section 4927.123 of the Revised Code, using the process found in section 4927.123 of the Revised Code.

B. To avoid confusion and protect consumers, the PUCO should clarify the process for notice required under R.C. 4905.402(G) where a local telephone company has filed an application at the FCC for change of control.

Sub. HB 402 removed PUCO jurisdiction over mergers and acquisitions of local telephone companies (and their holding companies) that must seek FCC approval of the transaction.⁴ Instead of seeking PUCO approval of the transaction, such telephone companies need only notify the PUCO.

The PUCO Staff proposes to implement R.C. 4905.402(G) with two changes to Ohio Adm. Code 4901:1-6-29. The PUCO Staff proposes language in paragraph (C)(1) that includes an exception from filing requirements for telephone companies, with a

³ The telephone industry proposes statutory changes every year or two. *See, e.g.*, SB 162, 128th General Assembly; HB 487, 129th General Assembly; SB 271, 129th General Assembly; HB 490, 130th General Assembly; HB 64, 131st General Assembly. Sub. HB 402 was adopted in the 132nd General Assembly.

⁴ R.C. 4905.402(G).

reference to new proposed paragraph (E)(2). Proposed paragraph (E)(2) states that PUCO approval of a change in ownership is not needed where the telephone company files an application with the FCC. But proposed paragraph (E)(2) refers back to paragraph (C): “A domestic telephone company or a holding company controlling a domestic telephone company that files an application with the FCC seeking authority for a transfer of control or merger shall file notice of the application with the public utilities commission of Ohio following the procedures set forth in paragraph (C) of this rule.”⁵ The only notice procedures in paragraph (C) are in paragraph (C)(1). Thus, proposed paragraph (E)(2) refers back to a provision that references the exception found in proposed paragraph (E)(2). This circular language may be confusing.

To protect consumers, the PUCO should revise this confusing language. Instead of referring back to paragraph (C)(1), the notice procedures for telephone companies that have filed a change of ownership application at the FCC should be specified in paragraph (E)(2).

III. CONCLUSION

Sub. HB 402 made significant changes to PUCO jurisdiction. It also set the stage for unlimited increases in the prices consumers pay for basic service. To help protect consumers, the PUCO should adopt the Consumer Groups’ recommendations.

⁵ Entry, Appendix at 22-23.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission this 10th day of April 2019.

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Summary: Comments Comments on Proposed Rules Affecting Ohioan's Basic Telephone Service by Greater Edgemont Community Coalition, The Legal Aid Society of Cleveland, Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel, Ohio Association of Community Action Agencies, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.