

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**CONSUMER PROTECTION APPLICATION FOR REHEARING REGARDING
THE PUCO'S PROCESS FOR PUBLIC COMMENTS BY
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April 8, 2022

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Certain procedures and timelines were mandated for the Public Utilities Commission of Ohio ("PUCO") to follow when the 132nd Ohio General Assembly adopted Substitute House Bill 402 (" Sub. H.B. 402"), which became effective on March 20, 2019.¹ However, the PUCO failed to follow these directives and in so doing Consumer Groups² Consumer Protection Comments³ and potentially other public

¹ Ohio Legislative Service Commission Final Analysis, Sub H.B. 402, page 12, 132nd General Assembly, effective date March 20, 2019. Sub H.B. 402 addressed a number of topics related to the regulation of local telecommunications in Ohio, including service quality and pricing flexibility for basic local exchange services ("BLES").

² The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. and the Legal Aid Society of Southwest Ohio, Inc.

³ Consumer Protection Comments Regarding HB 402 and PUCO Staff Report by Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, and Pro Seniors, Inc., Case No. 19-173-TP-ORD (March 15, 2022) ("Consumer Groups' Comments").

comments were not included with the Staff report sent to the legislature as the PUCO directed in its March 9, 2022 Order.⁴

The PUCO's December 15, 2021 Entry noted that "[p]ursuant to Sub. H.B. 402, the Commission shall allow three months for public comment on the report."⁵ The Entry explained that public comments should be formally filed in the docket either electronically or mailed, and also stated that comments "must be received no later than March 15, 2022."⁶ Accordingly, Consumer Groups timely filed its Consumer Protection Comments in the docket on March 15, 2022, as the Entry provided.

The PUCO's March 9, 2022 Finding and Order erred in prematurely submitting its report on basic local exchange service ("BLES") to the legislature. The Order also stated it was including a link to the public comments filed in response to the Staff Report.⁷ There were no public comments filed at that time. Consumer Groups' timely-filed March 15 public comments (and the only docketed comments to-date) were not included for submittal with the Staff report.

Section 4(C) of the enabling language for Sub. H.B. 402 states that the PUCO "shall allow three months for public comment on the report."⁸ The PUCO violated this statute by not allowing the full three months for public comments as required by the

⁴ *In the Matter of the Commission's Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly*, Case No. 19-173-TP-ORD, Finding and Order (March 9, 2022) ("March 9, 2022 Order").

⁵ *In the Matter of the Commission's Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly*, Case No. 19-173-TP-ORD, Entry (December 15, 2021) ("December 15, 2021 Entry") at 2.

⁶ *Id.*

⁷ PUCO March 9, 2022 Order at 2.

⁸ Sub. H.B. 402, page 12, Section 4(C), 132nd General Assembly (March 20, 2019).

legislature. In doing so, Consumer Groups' Consumer Protection Comments were not included with the public comments sent to the legislature.

The PUCO's Order was unreasonable and unlawful in the following respects:

ASSIGNMENT OF ERROR 1: The PUCO erred when it unjustly and unreasonably prematurely submitted its report to the legislature and in doing so denied the opportunity for meaningful public comment to be included with the PUCO Staff report to the legislature.

ASSIGNMENT OF ERROR 2: The PUCO erred by unjustly and unreasonably not ordering that any comments filed by the statutory due date be forwarded to the legislature.

The reasons in support of this application for rehearing are set forth in the accompanying Memorandum in Support. The PUCO should grant rehearing and abrogate or modify its Order as requested herein by Consumer Groups.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Sub. H.B. 402, effective March 20, 2019, addressed a number of topics related to the regulation of local telecommunications in Ohio, including service quality and pricing flexibility for basic local exchange services. The Act directed the PUCO Staff to produce a report no later than three years after its effective date (by March 20, 2022) to include the following information:

- 1) The number of basic local exchange lines in service in Ohio at the time of the report;
- 2) The aggregate amount of line loss in Ohio since March 20, 2019;
- 3) The change in the price of BLES in each exchange area in Ohio over the three years since March 20, 2019.

By Entry dated August 25, 2021,⁹ the PUCO directed each incumbent local exchange carrier (“ILEC”) in the state to submit this information, and on December 15, 2021, the PUCO Staff issued its report summarizing the information submitted by the ILECs.¹⁰

⁹ *In the Matter of the Commission's Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly*, Case No. 19-173-TP-ORD, Entry (August 25, 2021) (“August 25, 2021 Entry”).

¹⁰ Report of the Staff of the Public Utilities Commission of Ohio Pursuant to Substitute House Bill 402 in Case No. 19-173-TP-ORD (“Staff report”), December 15, 2021. The Staff report is attached to the Commission’s December 15th Entry.

The PUCO’s December 15, 2021 Entry attached the Staff report and noted that “[p]ursuant to Sub. H.B. 402, the Commission shall allow three months for public comment on the report.”¹¹ The Entry explained that public comments should be formally filed in the docket either electronically or mailed, and also stated that comments “must be received no later than March 15, 2022.”¹² Consumer Groups timely filed its Consumer Protection Comments in the docket on March 15, 2022, as the Entry provided.

The PUCO set a deadline of March 15, 2022 for the filing of public comments and Consumer Groups followed that due date. No one else filed comments. But the PUCO’s Order, entered a week early on March 9, 2022, sent the legislature only its Order attaching the Staff report, which was renamed “Report of the Public Utilities Commission of Ohio Pursuant to Substitute House Bill 402.”¹³ The Order stated that in addition to the PUCO Staff’s report, it was also sending along a link to the public comments filed in response to the Staff report.¹⁴

But on March 9, there were no filed public comments. Consumer Groups’ timely-filed March 15 public comments were thus not included for submittal with the Staff report sent to the legislature. The timely comments were not considered by the PUCO in preparing its final report to the legislature. The PUCO’s March 9, 2022 Finding and Order erred in prematurely submitting the Staff report on basic local exchange service to the legislature and not allowing the full three months for Comments.

¹¹ PUCO December 15, 2021 Entry at 1.

¹² PUCO December 15, 2021 Entry at 2.

¹³ PUCO March 9, 2022 Order.

¹⁴ *Id.* at 2.

II. MATTERS FOR REHEARING

ASSIGNMENT OF ERROR 1: The PUCO erred when it unjustly and unreasonably prematurely submitted its report to the legislature and in doing so denied the opportunity for meaningful public comment to be included with the PUCO Staff report to the legislature.

Under the Sub. H.B. 402, the PUCO Staff was required to issue a report addressing basic local exchange service (BLES) issues three years after the date the legislation was enacted on March 20, 2019.¹⁵ The Act required the PUCO Staff to produce and docket a report, not later than March 20, 2022 that included the number of basic local exchange lines in service in Ohio at the time of the report; the aggregate amount of line loss in Ohio since March 20, 2019; and the change in the price of BLES in each exchange area in Ohio over the three years since March 20, 2019.¹⁶

The PUCO Staff surveyed the industry and prepared a report for public comments that was docketed on December 15, 2021 and attached to the PUCO's Entry of that same day.¹⁷ Sub. H. B. 402 also required that the PUCO must then "allow three months for public comment on the report."¹⁸ The PUCO's December 15, 2021 Entry thus directed that "public comment be provided relative to the attached Commission Staff report regarding local telephone service issued pursuant to Substitute House Bill 402."¹⁹ The PUCO set a due date of March 15, 2022 for the filing of comments.²⁰

¹⁵ Sub. H.B. 402, page 12, Section 4(B), 132nd General Assembly.

¹⁶ *Id.*

¹⁷ Report of the Staff of the Public Utilities Commission of Ohio Pursuant to Substitute House Bill 402 in Case No. 19-173-TP-ORD ("Staff Report"), December 15, 2021. The Staff Report is attached to the Commission's December 15th Entry.

¹⁸ Sub. H.B. 402, page 12, Section 4(C), 132nd General Assembly.

¹⁹ PUCO December 15, 2021 Entry, Summary at 1.

²⁰ *Id.* at 2.

With this date in mind, over the next two months, Consumer Groups worked diligently with a consultant²¹ and analyzed the data contained in the PUCO Staff report.

Consumer Groups' timely-filed comments had four primary purposes:

- First, the Comments highlighted important findings and conclusions that can be drawn from the Staff Report (and data contained therein) as they relate to the continued importance of reliable and affordable BLES service for Ohio consumers.
- Second, the Comments discussed certain developments that have occurred in the Ohio telecommunications industry that should be considered by the PUCO and Ohio Legislature as important context by which to interpret the Staff Report and evaluate whether and to what extent the expectations associated with Sub. H.B. 402 have been met.
- Third, the Comments discussed some of the risks of not maintaining sufficient protections for BLES – risks which tend to disproportionately impact vulnerable members of the Ohio population.
- Fourth, recommendations provided findings and conclusions that the PUCO should include in its report to the Ohio Legislature.

Consumer Groups' Comments demonstrated that basic local exchange service still plays a critical role in the Ohio telecommunications industry and is important to Ohioans. A significant number of Ohio residential consumers continue to depend on basic local exchange service, and are impacted by price increases, deteriorating quality of service, and other aspects associated with inadequate BLES protections. Basic local exchange service protections should be enforced as required by law. Service quality should be investigated.

These are important issues that should be provided to the Ohio Legislature. The Ohio Legislature should be advised on the need to preserve and protect basic local

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exchange services. The legislature would surely want to be informed of Consumer Groups' Comments, as they represent the legislators' constituents.

However, before the date that the Consumer Groups' Comments were required to be filed, the PUCO on March 9, 2022 issued a Finding and Order. The PUCO's Order adopted the Staff report and directed that a copy of the Order and report be served upon select legislative committees that deal with telecommunications issues.²² But since the Order predated the end of the official public comment period (March 15, 2022), the timely comments that were filed by Consumer Groups on March 15, 2022 were unjustly and unreasonably not included in what was sent to the legislature. The Staff report provided the raw numbers and data; Consumer Groups' Comments interpreted that data and provided analysis. Consumer Groups' Comments should be seen by the legislature in conjunction with the Staff report.

In addition, public input and analysis that is collected through the PUCO call center and that supports the continuing need for quality and affordable phone service was unjustly and unreasonably excluded from the report that the PUCO sent to the legislature. The PUCO could have, and should have, analyzed the customer complaint data it receives from its call center regarding service quality and other basic local exchange service issues to make the report sent to the legislature more useful.

The PUCO's report noted that "...some segment of Ohioans continue to rely on BLES and non-BLES wireline service in order to fulfill their telecommunication needs."²³ The next sentence in the report also noted that there has not been a "decrease in

²² March 9, 2022 Order at 2-3.

²³ *Id.*, Appendix A.

the number of calls to the Commission's Consumer Services Hotline from customers seeking assistance concerning their telecommunication services.”²⁴ But the PUCO did not include (but should have included) a more thorough analysis that reflected the public comments that are made to its call center that demonstrate the continuing need for Ohio to maintain quality and affordable landline telephone services. The PUCO Staff inexplicably limited the content of its report by not including a full analysis of the public contacts that it receives through its call center to demonstrate the importance of BLES and the continuing need for quality and affordable telephone service.

Merely reporting on the number of phone lines at different times negates why the legislature required the PUCO to seek public comments to begin with. In other words, the PUCO provided numbers and data to the legislature, but did not provide a full context of what those numbers mean. The PUCO should have provided a more thorough level of analysis in the report sent to the legislature. However, Consumer Groups' Comments does provide that analysis and interpretation of the data so that it can be meaningful to the General Assembly.

The Staff report is subject to being misconstrued by the telecommunications industry, regulators and policymakers alike to indicate limited to no public interest in this topic when in fact, nothing could be further from the truth. Consumers contact the PUCO's call center to complain about service quality and other basic local exchange

²⁴ *Id.*

service issues. Consumers file informal complaints. Over the years, the PUCO itself has registered complaints against incumbent local exchange carriers.²⁵

The PUCO erred by submitting a report to the legislature that only included limited partial information from its Staff and from the utilities without telling the rest of the story that was available in public comments. The rest of the story involves the plight of hundreds of thousands of Ohioans who depend upon landline telephone service in their everyday lives to communicate with family and friends, obtain emergency assistance, interact within their communities and the government, and conduct commerce.

That is not a balanced way of administering justice on a consumer issue that involves fundamentally protecting the service quality and affordability of telecommunications services available to Ohioans. The PUCO's analysis and reporting of this issue to the legislature should include Consumer Groups' Comments as well as public comment from Ohioans who depend upon these services.

ASSIGNMENT OF ERROR 2: The PUCO erred by unjustly and unreasonably not ordering that any comments filed by the statutory due date be forwarded to the legislature.

Section 4(C) of the enabling language for Sub. H.B. 402 states that the PUCO "shall allow three months for public comment on the report."²⁶ The PUCO violated this statute by not allowing the full three months for public comments such as the Consumer Groups' Consumer Protection Comments be included with the public comments sent to the legislature.

²⁵ See, e.g., *In the Matter of the Commission's Initiation of a Complaint and Investigation Proceeding Against Frontier North, Inc. and Potential Remedial Action*, Case No. 19-1582-TP-COC (August 13, 2019).

²⁶ Sub. H.B. 402, page 12, Section 4(C), 132nd General Assembly.

The PUCO’s March 9, 2022 Order stated that “a link to the public comments filed in response to the Staff Report and docketed in this matter...is included in the Commission Report.”²⁷ But to-date, there is nothing to be seen when the hyperlink found in the report is clicked. By prematurely ending the comment period, there were no docketed comments included with the Staff report. (And to-date, only Consumer Groups have filed comments in this proceeding). Although the Consumer Groups’ Comments was timely filed six days later on the March 15 due date, by that point the PUCO’s Order attaching the PUCO Staff’s report was already sent to the legislature.

Consumer Groups recognize that the PUCO was directed by the legislature to submit its report to the legislature three months after the Staff Report was docketed.²⁸ But the PUCO was also required under the Act to “allow three months for public comment on the report.”²⁹

If the PUCO felt compelled to send the Report (as drafted at that time) to the legislature ahead of the March 15 statutory due date, the PUCO should have also required that any subsequent comments that were filed on or before the due date be forwarded to the legislature. In this manner, the PUCO and the legislature could be assured that all voices would be heard.

This resolution would have addressed the PUCO’s comment noted in the March 9, 2022 Order regarding lack of analysis. There the PUCO commented, “while its report includes all of the data required pursuant to Sub. H.B. 402, no analysis of the underlying

²⁷ March 9, 2022 Order at 2.

²⁸ Sub. H. B. 402.

²⁹ Sub. H.B. 402, page 12, Section 4(C), 132nd General Assembly.

basis for the included data is provided as none is called for pursuant to the legislation.”³⁰ Consumer Groups’ Comments provides that analysis.

Consumer Groups’ Comments analyzed the data and explained the importance of preserving protections for the hundreds of thousands of consumers that continue to rely on ILEC basic local exchange services – many which rely on BLES as the only feasible voice service available. Protecting basic local exchange service also advances the state telecommunications policies that the Commission must consider when implementing Sub. H.B. 402,³¹ including “[e]nsur[ing] the adequacy and reliability of basic local exchange service...and the adequacy and reliability of voice service throughout the state.”³²

The PUCO erred in cutting short the comment period required under Sub. H.B. 402, failing to require an analysis of public comments it received through its call center, and failing to submit to the legislature Consumer Groups’ timely-filed Comments.

III. CONCLUSION

The PUCO unjustly and unreasonably erred in prematurely submitting its report to the legislature without including any provision for also including timely-filed comments. In doing so the PUCO did not allow for meaningful public comment to be included with the PUCO Staff report. The PUCO should have required that any comments that were filed on or before the statutory due date be forwarded to the

³⁰ March 9, 2022 Order at 2.

³¹ Title 49, Chapter 4927, Section B (“The public utilities commission shall consider the policy set forth in this section in carrying out this chapter.”).

³² Title 49, Chapter 4927, Section A(1).

legislature. The PUCO should remedy this situation by submitting Consumer Groups' Comments to the legislature.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Consumer Protection Application for Rehearing has been served via electronic transmission upon the following parties of record this 8th day of April 2022.

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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Case No(s). 19-0173-TP-ORD

Summary: App for Rehearing Consumer Protection Application for Rehearing Regarding the PUCO's Process for Public Comments by Advocates for Basic Legal Equality, Inc., Legal Aid Society of Cleveland, Legal Aid Society of Columbus, Legal Aid Society of Southwest Ohio, Inc., 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 Mrs. Tracy J. Greene on behalf of Botschner O'Brien, Amy