

## **BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

### **Memorandum of the Ohio Telecom Association in Opposition to the Application for Rehearing of the Ohio Consumers' Counsel and Others**

#### **I.     Introduction**

Section 4 of Substitute House Bill 402 required the Public Utilities Commission of Ohio ("Commission") to prepare and docket a report on the pricing of basic local exchange service and line loss, open a period for comments of three months, and deliver a report to the General Assembly not later than exactly three months after the report was initially filed at the Commission. Sub. H.B. 402, 132nd Gen. Assembly, § 4 (effective Mar. 20, 2019) ("HB 402"). To satisfy the requirements of Section 4, the Commission issued orders directing the submission of data, the filing of a staff report on December 15, 2022, the initiation of a comment period ending on March 15, 2022, and the submission of a report to the General Assembly. Entry (Aug. 15, 2021); Entry (Dec. 15, 2021); Finding and Order ¶ 10 (Mar. 9, 2022). In the Finding and Order directing the submission of the report to the General Assembly on March 9, 2022, the Commission also reaffirmed that interested persons could file comments regarding the report through March 15, 2022. Id., ¶ 5. Recognizing that the date by which it was required to deliver the report to the General Assembly and the end of the comment period were the same day, the Commission noted that it was unable to provide a summarization of the public comments submitted to the staff report, but instead provided a link to the docket in its report to the General Assembly. Id., ¶ 6.

The Office of the Ohio Consumers' Counsel and several other groups (collectively referred to as OCC) filed joint comments on March 15, 2022, the last day of the comment period required by statute. Consumer Protection Comments Regarding HB402 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. (Mar. 15, 2022).

Unsatisfied by the Commission's attempt to address the unusual legislative mandate that required the Commission to submit its report not later than the same day that the comment period ended, OCC (with several additional new interested persons that did not join in the comments filed on March 15, 2022)<sup>1</sup> seeks rehearing of the Finding and Order. 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 (Apr. 8, 2022) ("OCC Application for Rehearing"). The application for rehearing advances two assignments of error. First, it alleges that the Commission erred when it submitted a report to the General Assembly prematurely and thereby denied the opportunity for meaningful public comment to be included in the report. Id. at 3 and Memorandum in Support at 3-7. Second, it asserts that comments filed by March 15, 2022 should be forwarded to the General Assembly. Id. at 3 and Memorandum in Support at 7-9.

Neither assignment of error states a valid legal or reasoned basis for a grant for rehearing. Accordingly, OCC's application for rehearing should be denied. R.C. 4903.10.

## **II. The Commission's actions regarding the report comply with the requirements of Section 4 of HB 402.**

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<sup>1</sup> For convenience, both groups are identified as OCC.

Division (B) of Section 4 of HB 402 directed the staff of the Commission to produce and docket a report that includes the number of basic local exchange lines in service in Ohio, the aggregate amount of line loss, and the change in the price of basic local exchange service in each exchange area in the state over the three years since March 20, 2019, the effective date of the HB 402. HB 402, § 4(B). Under division (C), the Commission was directed to allow three months for public comment on the report. Id., § 4(C). Under division (D), the General Assembly further directed that “[n]ot later than a date that is exactly three months after the report is docketed under division (B) ... the Commission shall submit a report to the standing committees in the House of Representatives and the Senate primarily dealing with telecommunications issues, the President of the Senate, and the Speaker of the House of Representatives. The report shall include the Commission’s assessment of the information described in divisions (B)(1) to (3) of [Section 4].” Id., § 4(D).

Through several entries, the Commission directed the preparation and submission of a report to the General Assembly. After requesting data from incumbent local exchange carriers, the Commission docketed a staff report in a December 15, 2021 Entry. Entry (Dec. 15, 2021) (staff report attached). In that same entry, the Commission opened a three month comment period. Id. ¶ 4. Then, the Commission adopted and directed the transmission of a report with its assessment to the committees and officers of the General Assembly. Finding and Order ¶ 10 (Mar. 9, 2022). Thus, the Commission and its staff complied with each requirement of Section 4 of HB 402 to the letter.

Although the Commission met all the requirements of Section 4 of HB 402, OCC complains that its views were not presented in the report provided to the General Assembly

because the Commission prematurely released the report. OCC Application for Rehearing, Memorandum in Support at 4-5. This assignment of error is without merit for several reasons.<sup>2</sup>

First, the premise that the report was delivered prematurely is not correct. The statute provides that the Commission must submit a report not later than exactly three months after the staff report is filed with the Commission. HB 402, § 4(D). Under this requirement, the statute states the date by which the report must be filed; it does not limit the Commission's authority to file a report before the three month period has ended. Even if the report was submitted to the General Assembly on the date of the Finding and Order, March 9, 2022, the submission would have been timely. The only way OCC's claim that the report was submitted prematurely could be correct is if the Commission were to insert an additional term into Section 4(D) that does not exist.

Second, OCC's complaint that its views were not included in the report ignores the Commission's attempt to assure that the views of commenters are available to the General Assembly. Recognizing that the date on which the comment period ended and the date by which the report must be submitted to the General Assembly were the same, the Commission directed that a link to the public comments filed in response to the staff report be included in the report submitted to the General Assembly. Finding and Order ¶ 6 (Mar. 9, 2022). Effectively, therefore, the Commission assisted persons that might be interested in commenters' view with direct access to any comments that were filed.

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<sup>2</sup> In what appears to be an unrelated argument supporting the first assignment of error, OCC argues that other issues such as call center activity should have been included in the submitted report. On its face, Section 4(B) and (D) specify the information that the General Assembly sought, and those sections do not require the deep dive into call center records that OCC states should be included in the submitted report. Further, OCC offers no factual reason for doing so. OCC Application for Rehearing, Memorandum in Support at 5.

Third, OCC does not demonstrate that it is harmed by the Commission's resolution of the problematic timing contained in Section 4 of HB 402 since it has alternative means of assuring its views are presented to elected officials. OCC has the same ability as any other person to offer its views to the General Assembly, and it frequently appears as a proponent or opponent of pending legislation in hearings of relevant legislative committees. Thus, there is no harm or foul that warrants rehearing.

Finally, any fault for an omission of OCC's views in the report submitted to the General Assembly rests with OCC. The comment period began on December 15, 2021 and remained open until March 15, 2022. Once the staff report was filed on December 15, 2021, Section 4(D) required the Commission to submit a report to the General Assembly on or before March 15, 2022. Because the comment period and the last day on which the submission of a report to the General Assembly fell on the same day, OCC was on notice that its comments could not be reviewed and incorporated into the report if it dallied until the last day of the comment period to file its comments. Yet, OCC elected to do just that. Thus, OCC cannot legitimately complain about an alleged error it invited.<sup>3</sup>

In summary, the Commission complied with Section 4 of HB 402 and provided means not required by Ohio law to assure that OCC's views were available to members of the General Assembly. The error for the failure to include those views in the final report submitted to the General Assembly, if there is one, rests with OCC. As a result, OCC's first assignment of error does not state grounds for rehearing because it fails to demonstrate that the Finding and Order is either unjust, unwarranted, or should be changed. R.C. 4903.10.

### **III. The Commission was under no obligation to forward OCC's comments to the General Assembly**

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<sup>3</sup> "If there were error, appellant invited the error himself and will not be heard to complain." State v. Steele, 2005-Ohio-4786 ¶ 14 (10th Ct. App. Sept. 13, 2005).

In its second assignment of error, OCC alleges that the Commission erred because it did not forward OCC's comments to the General Assembly. OCC Application for Rehearing at 3. Since there is not any legal requirement to submit the comments of interested persons to the General Assembly, the alleged error seems to be based on the implicit claim that it would be reasonable to do so. To advance this assignment of error, OCC makes several factual claims. Initially, OCC asserts that the PUCO did not afford OCC the full three months that was to be provided for comments. OCC Application for Rehearing, Memorandum in Support at 7. Additionally, it claims that "to date, there is nothing to be seen when the hyperlink found in the report is clicked." Id. at 8. Finally, it asserts its comments should be provided to the General Assembly because they analyzed the data contained in the staff report. Id. at 8-9.

None of these assertions supports OCC's demand that the Commission should submit OCC's comments to the General Assembly.

First, OCC's assertion that it was not afforded the full three months to comment is wrong. The comment period was open for three months as required by Section 4 of HB 402, and OCC filed its comments on the last day of the comment period, March 15, 2022. Those comments remain a part of the record in this case. Thus, the claim that OCC was not afforded the full three months to comment is factually incorrect.

Second, OCC's statement that there is nothing to be seen when the hyperlink found in the report is clicked is not correct. The hyperlink links to the docket card that includes the comments OCC filed in this case.

Third, the assertion that the Commission should be required to forward OCC's comments to the General Assembly is undermined by the Commission's inclusion of the hyperlink to the docket in the report. Although nothing in Section 4 requires the Commission to forward OCC's

comments, the Commission provided access to those comments through the inclusion of the hyperlink. Thus, whatever interest OCC had in assuring that its comments were provided to the General Assembly was addressed in the Finding and Order.

Accordingly, OCC's second assignment of error does not provide a reasoned basis to grant rehearing.

#### **IV. Conclusion**

OCC's Application for Rehearing fails to show that the Finding and Order is unjust, unwarranted, or should be changed. R.C. 4903.10. Accordingly, the Commission should affirm its original order.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Memorandum of the Ohio Telecom Association in Opposition to the Application for Rehearing of the Ohio Consumers' Counsel and Others* will be served on April 18, 2022, pursuant to the procedures established by the Document Information System under Rule 4901-1-05. A copy was also served by email to the following persons.

/s/ Frank P. Darr

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Commission of Ohio Docketing Information System on**

**4/18/2022 2:39:36 PM**

**in**

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

Summary: Memorandum Memorandum of the Ohio Telecom Association in  
Opposition to the Application for Rehearing of the Ohio Consumers' Counsel and  
Others electronically filed by Frank P. Darr on behalf of Ohio Telecom Association