

THE PUBLIC UTILITIES COMMISSION OF OHIO

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 ON REHEARING

Entered in the Journal on May 4, 2022

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing jointly filed by the 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.

II. DISCUSSION

{¶ 2} The 132nd Ohio General Assembly adopted Substitute House Bill 402 (Sub. H.B. 402). The bill was effective March 20, 2019. Among other things, the bill directed the Commission Staff to produce and docket a report that includes: (a) the number of basic local exchange lines in service in the state at the time of the report; (b) the aggregate amount of line loss, as defined in R.C. 4927.123, since the effective date of Sub. H.B. 402; and (c) the change in the price of basic local exchange service (BLES) in each exchange area in this state over the three years since the effective date of Sub. H.B. 402.

{¶ 3} Consistent with the Commission's August 25, 2021 Entry, all incumbent local carriers (ILECs) were required to provide Staff with specified information regarding their BLES offerings. Based on the information received, Staff issued its Staff Report on December 15, 2021.

{¶ 4} No later than a date that is exactly three months after the Staff Report is docketed, the Commission must submit a report to the standing committees in the House of Representatives and the Senate primarily dealing with telecommunication issues, the

President of the Senate, and the Speaker of the House of Representatives. Additionally, Sub. H.B. 402 permits an ILEC to apply for an exemption from the price cap requirements for BLES four years from the effective date of the legislation, exempts telephone companies from treble damages, and limits the Commission's ability to consider domestic telephone company change of control applications.

{¶ 5} Consistent with Sub. H.B. 402, the Commission was required to allow three months for public comment on the report. Pursuant to the Commission's December 15, 2021 Entry, on or before March 15, 2022, all public comments were required to be formally filed in this docket either electronically via the Commission's Docketing Information System or mailed to the Commission's offices.

{¶ 6} The Commission report required by Sub. H.B. 402 was attached as Appendix A and adopted pursuant to the Commission's Finding and Order of March 9, 2022. In its report, the Commission adopted the Staff Report filed on December 15, 2021, and included certain additional clarifications. The Commission noted that since the requisite filing date of the Commission's report and the end of the public comment period occurred on the same day, the Commission was unable to provide a summarization of the public comments submitted in this docket. Notwithstanding this fact, the Commission in its Finding and Order noted that a link to the public comments filed in response to the Staff Report and docketed in this matter, Case No. 19-173-TP-ORD, is included in the Commission report. Additionally, the Commission noted that, while its report includes all of the data required pursuant to Section 4 of Sub. H.B. 402, no analysis of the underlying basis for the included data is provided as none is called for pursuant to the legislation.

{¶ 7} 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 matter determined in that proceeding.

{¶ 8} An application for rehearing was jointly filed on April 8, 2022, by the 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 (OCC), Ohio Association of Community Action Agencies, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (collectively, Consumer Groups).

{¶ 9} A memorandum contra the application for rehearing was filed by the Ohio Telecom Association (OTA) on April 18, 2022.

{¶ 10} In their first assignment of error, Consumer Groups state that the Commission 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 report to the legislature.

{¶ 11} In its second assignment of error, Consumer Groups argue that the Commission erred by unjustly and unreasonably not ordering that any comments filed by the statutory due date be forwarded to the legislature.

{¶ 12} Consumer Groups submit that certain procedures and timelines were mandated to follow the adoption of Sub H.B. 402 by the 132nd Ohio General Assembly effective on March 20, 2019. Specifically, Consumer Groups reference the language of the Commission's Entry of December 15, 2021, which stated that "[p]ursuant to Sub. H.B. 402, the Commission shall allow three months for public comment on the report." Consumer Groups also note that the Entry stated that public comments should be formally filed in the docket either electronically or mailed, and that comments were to be received no later than March 15, 2022.

{¶ 13} Consumer Groups contend that the Commission failed to follow these directives and in doing so the joint comments filed on March 15, 2022, by Legal Aid Society of Southwest Ohio, LLC, OCC, Ohio Poverty Law Center, and Pro Seniors, Inc., as well as potentially other comments were not included with the report sent to the legislature as directed in the Finding and Order of March 9, 2022. Additionally, Consumer Groups argue

that the Commission, in its Finding and Order of March 9, 2022, erred in prematurely submitting the BLES report to the legislature. Consumer Groups also point out that, although the Finding and Order referenced a hyperlink to the public comments filed in response to the Staff Report, there were no public comments filed at that time and there is nothing to be seen when the hyperlink found in the report is clicked. Consumer Groups argue that the timely filed March 15, 2022, public comments were not included for submittal with the Staff Report sent to the legislature and were not considered by the Commission in preparing its final report to the legislature.

{¶ 14} According to Consumer Groups, if the Commission felt compelled to send its report to the legislature ahead of the March 15, 2022, statutory due date, the Commission should have also required that any subsequent comments that were filed on or before the due date be forwarded to the legislature to ensure that all voices would be heard. Consumer Groups represent that the comments filed on March 15, 2022, analyzed the data in the Staff Report and explained the importance of preserving protections for those consumers who continue to rely on ILEC BLES and advancing the state telecommunications policies that the Commission must consider consistent with R.C. Chapter 4927.02(A)(1).

{¶ 15} Additionally, Consumer Groups believe that public input complaint data that is collected through the Commission Call Center and supports the continuing need for quality and affordable phone service was unjustly and unreasonably excluded from the report that the Commission sent to the legislature. Further, Consumer Groups argue that while the Commission provided numbers and data to the legislature, it did not provide a full context of what the numbers mean. Consumer Groups assert that its comments provide such an analysis and interpretation of the data so that it can be meaningful to the General Assembly.

{¶ 16} OTA asserts that the Commission's actions regarding the report sent to the legislature comply with the requirements of Section 4 of Sub. H.B. 402. Specifically, OTA notes that the Commission directed the preparation and submission of a report to the

General Assembly through the requesting of data from the ILECs, the docketing of a Staff Report on December 15, 2021, and the opening of a three-month comment period. According to OTA, the Commission ultimately adopted its report and sent it to the designated entities.

{¶ 17} Responding to Consumer Groups' contention that views were not presented in the report provided to the General Assembly because the Commission prematurely released its report, OTA asserts that this assignment of error is without merit for several reasons. First, OTA rejects the argument that the report was delivered prematurely. In support, OTA submits that although Sub. H.B. 402 Section 4(D) requires that the Commission must submit a report not later than exactly three months after the Staff Report is filed with the Commission, it does not limit the Commission's authority to file a report before the three-month period has ended.

{¶ 18} In response to Consumer Groups' argument that their views were not included in the report, OTA points to the Commission's recognition that, pursuant to the legislation, the end of the comment period and filing date for the report are the same. OTA notes that in response to this scenario, 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. OTA contends that Consumer Groups have not demonstrated that they were harmed by the Commission's resolution of the problematic timing contained in Sub. H.B. 402 Section 4(D) since it has alternative means of assuring its views are presented to elected officials. According to OTA, Consumer Groups have the same ability as any other person to offer its views to the General Assembly.

{¶ 19} Additionally, OTA contends that any fault for the omission of Consumer Groups' views in the report submitted to the legislature rests with Consumer Groups. Because the comment period and the last day on which the submission of a report to the legislature fell on the same day, OTA asserts that Consumer Groups were put on notice that

its comments could not be reviewed and incorporated into the report if their comments were not filed until the last day.

{¶ 20} Further, OTA asserts that the Commission was under no obligation to forward comments to the legislature. In support of its position, OTA dismisses Consumer Groups' assertion that it was not afforded the full three months to comment. According to OTA, the comments filed on March 15, 2022, by Legal Aid Society of Southwest Ohio, LLC, OCC, Ohio Poverty Law Center, and Pro Seniors, Inc., remain part of the record in this case. OTA also rejects Consumer Groups' arguments regarding the hyperlink not functioning properly. OTA points out that the hyperlink connects to the docket card that includes the comments filed on March 15, 2022, in this case. Additionally, OTA believes that any assertion that the Commission should be required to forward comments to the General Assembly is undermined by the Commission's inclusion of the hyperlink to the docket in the report provided to the legislature.

{¶ 21} In response to Consumer Groups' argument that other issues such as Commission Call Center activity should have been included in the submitted report, OTA notes that Sub. H.B. 402 Sections 4(B) and (D) specify the information that the General Assembly sought and that those sections do not require an analysis of Call Center records that Consumer Groups state should have been included in the submitted report.

{¶ 22} Based on the above arguments, OTA opines that Consumer Groups' application for rehearing fails to demonstrate that the Finding and Order is unjust, unwarranted, or should be changed.

{¶ 23} Upon a review of the arguments raised in Consumer Groups' application for rehearing, the Commission finds that the application for rehearing should be denied. Specifically, the Commission rejects Consumer Groups' argument that the Commission prematurely submitted its report to the legislature and in doing so denied the opportunity for meaningful public comment to be included with the report. In support of this decision, the Commission recognizes that as a public agency it is subject to the directives of the

legislature. In this case, pursuant to Sub. H.B. 402, no later than a date that is exactly three months after the Staff Report is docketed, the Commission must submit a report to the standing committees in the House of Representatives and the Senate primarily dealing with telecommunication issues, the President of the Senate, and the Speaker of the House of Representatives. Additionally, consistent with Sub. H.B. 402, the Commission is required to allow three months for public comment on the Staff Report. The Commission adopted its report on its last scheduled agenda prior to the March 15, 2022 deadline. As noted in the Commission's Finding and Order of March 9, 2022, since the requisite filing date of the Commission's report and the end of the public comment period occurred on the same day, the Commission was unable to provide a summarization of the public comments submitted in this docket. In fact, the Commission can find no language in Section 4 of Sub. H.B. 402 that requires the Commission to summarize the comments received on the Staff Report and the Consumer Groups have not cited to any such language. Notwithstanding this fact, a link to the public comments filed in response to the Staff Report and docketed in this matter was included in the Commission report. Despite Consumer Groups' argument to the contrary, the link provided in the Commission report does connect to the Docketing Information System from which Consumer Groups' Comments can be reviewed by the legislature under Case Documents.

{¶ 24} In response to Consumer Groups' argument that the Commission and its Staff failed to provide any analysis of the data contained in their respective reports, as noted in the Commission's Finding and Order of March 9, 2022, no analysis of the included data is called for pursuant to Section 4 of Sub. H.B. 402. Similarly, the legislation only required the submission of specified ILEC data and did not extend to the consideration and analysis of Commission Call Center data.

III. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the Consumer Groups' application for rehearing be denied.
It is, further,

{¶ 27} ORDERED, That a copy of this Entry on Rehearing be served upon each party
and interested persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JSA/mef

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

5/4/2022 2:27:44 PM

in

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

Summary: Entry denying the application for rehearing jointly filed by the 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 Heather A. Chilcote on behalf of Public Utilities Commission of Ohio