

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of The)
Western Reserve Telephone Company For)
Approval of an Elective Alternative Form) Case No. 04-1359-TP-ALT
of Regulation Pursuant to Chapter 4901:1-)
4, Ohio Admin. Code.)

**COMMENTS OF THE
OFFICE OF THE OHIO CONSUMERS' COUNSEL
ON WESTERN RESERVE TELEPHONE COMPANY
OHIO'S ELECTIVE ALTERNATIVE REGULATION PLAN**

On August 30, 2004, the Western Reserve Telephone Company ("Western Reserve" or "Company") filed an application ("Application") for elective alternative regulation ("elective alt. reg."). The Office of the Ohio Consumers' Counsel ("OCC") on behalf of the residential telephone consumers of the State of Ohio, submits the following comments to the Public Utilities Commission of Ohio ("Commission") in this proceeding. As discussed below, the OCC recommends that the Commission deny Western Reserve's Application due to the absence of competition or reasonably available alternatives for residential customers in Western Reserve's service territory.

In addition, Western Reserve's Application is counter to the public interest because it does not indicate that current Lifeline customers will be grandfathered into the

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Federal Lifeline program, as specifically required by Commission rules.¹ The Application is thus defective and should be denied.

A. WESTERN RESERVE'S RESIDENTIAL CUSTOMERS HAVE NO COMPETITIVE OPTIONS OR REASONABLY AVAILABLE ALTERNATIVES.

The OCC believes that elective alt. reg. is harmful to Ohio's residential telephone consumers. While cognizant of past rulings that the OCC believes misconstrued existing statutory requirements, the OCC nevertheless opposes the adoption of elective alt. reg. in service territories (such as Western Reserve's) where residential customers have no competitive alternatives for landline service. The absence of competition or reasonably available alternatives in Western Reserve's service territory should cause the Commission to conduct a hearing on the Application. However, the Commission's orders in previous elective alt. reg. cases have raised the bar for threshold issues necessary to meet the clear and convincing evidence requirement so high that meaningful public participation in these cases, as is provided for in the statute,² cannot, and does not

¹ Ohio Adm. Code 4901:1-4-05(B)(1)(c).

² R.C. 4927.03(A)(1), which also provides for a hearing on an alt. reg. plan, if the Commission considers one "necessary." The Commission's undefined and apparently unattainable "clear and convincing" standard has essentially precluded an opportunity for a hearing even in those instances where one is warranted.

occur.³ Indeed, the issues raised in these comments demonstrate that the public interest is not served by the Commission-imposed limitations on public participation in each company-specific elective alt. reg. case.

Western Reserve does not have any competitors for its residential traditional landline telephone customers. As of September 17, 2004, the Company⁴ has 19 interconnection agreements on file with the Commission. Of those 19, ten are with cellular companies for traffic exchange. The other agreements are either with companies that serve only business customers or prepaid providers. These providers do not offer reasonable alternatives to the Company's landline service. Because Western Reserve's residential landline customers have no competitive options, the OCC opposes the Company's Application. The approval of Western Reserve's application will result in a deregulated monopoly where Western Reserve will be able to raise rates for non-basic

³ A review of prior elective alt. reg. cases shows that the Commission's undefined "clear and convincing" standard apparently is unattainable. As part of its Request for a Hearing in *In the Matter of the Application of United Telephone Company of Ohio d/b/a Sprint, for Approval of an Elective Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Admin. Code*, Case No. 02-2117-TP-ALT, the OCC raised the issue of Sprint's earnings level (30.28% interstate ROE in 2001 and a five-year average of 28.15%), and advanced services (Sprint planned to deploy advanced services prior to and not contingent on elective alternative regulation); as part of the CenturyTel Request for a Hearing in *In the Matter of the Application of CenturyTel of Ohio, Inc. for Approval of an Elective Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Admin. Code*, Case No. 04-62-TP-ALT, the OCC raised the issue of CenturyTel's earnings level (21.74% ROE in 2002 and a five-year average of almost 24%), CenturyTel's continuing touchtone service charge, the total lack of CLEC offering service in the CenturyTel service territory, and the fact that CenturyTel had already deployed advanced services prior to and not contingent on any elective alternative regulation plan approval; finally in *In the Matter of the Application of Cincinnati Bell Telephone Company, for Approval of an Elective Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Admin. Code*, Case No. 04-720-TP-ALT, the OCC raised the issue of CBT's unprecedented earnings level (49.27% ROE in 2003 and a five-year average of 35.99%) and the subsidization of non-regulated debt by regulated earnings. In these cases, the Commission rejected the OCC arguments without explaining how the arguments failed to meet the still undefined "clear and convincing" requirement. With these issues having been rejected as not meeting the requirement, the OCC is left to ask if there are any issues that would meet the Commission's requirement. Clearly, there is a need to define the requirement.

⁴ Filed either with its sister company, ALLTEL Ohio Inc. or individually as Western Reserve or individually as ALLTEL.

services without review of the reasonableness of the increase and without customers having alternative options available from other suppliers.

B. THE APPLICATION IS NOT IN THE PUBLIC INTEREST DUE TO A FLAWED TARIFF PROVISION.

Western Reserve's Application fails to state that the Company will grandfather the existing participants in the Federal Lifeline program. The Company should affirmatively state that it will grandfather the participants in the Federal Lifeline program as specifically required by 4901:1-4-05(B)(1)(c) of the Ohio Admin. Code:

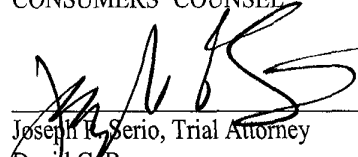
Existing lifeline customers that have optional features prior to the adoption of this plan will be grandfathered into the lifeline program so long as the customer makes no changes whatsoever to their existing local exchange service.

C. CONCLUSION

Granting Western Reserve's Application would not serve the public interest. If the Commission does grant the Application, however, the Commission should direct the Company to make the tariff change discussed above.

Respectfully submitted,

JANINE L MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

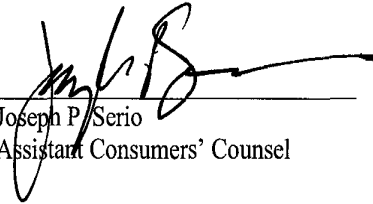
A handwritten signature in black ink, appearing to read "J. R. Serio", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments of the Office of the Ohio Consumers' Counsel on Western Reserve's Elective Alternative Regulation Plan was served via hand delivery, first class mail, postage prepaid to the parties identified below this 20th day of September, 2004.



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