

FILE

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

2004 APR -5 PM 5:09

In the Matter of the Application of)
CenturyTel of Ohio, Inc. For Approval of)
an Alternative Form of Regulation)
Pursuant to Chapter 4901:1-4, Ohio)
Administrative Code.)

Case No. 04-62-TP-ALT

PUCO

**CENTURYTEL OF OHIO, INC.'S MEMORANDUM CONTRA
OCC'S APPLICATION FOR REHEARING**

Pursuant to Rule 4901-1-35(B), Ohio Admin. Code, CenturyTel of Ohio, Inc. (CenturyTel-Ohio) submits its memorandum contra the Office of Consumers' Counsel's (OCC) March 26, 2004 Application for Rehearing of the Commission's March 11, 2004 Finding and Order (Order). OCC's Application for Rehearing, as is the case with each of its earlier filings, is primarily an attack on the Commission's Elective Alternative Regulation (Elec. Alt. Reg.) rules, Chapter 4901:1-4, Ohio Admin. Code. OCC does not seriously contend that CenturyTel-Ohio's Elec. Alt. Reg. Plan application does not comply with the Commission's rules. OCC's Application for Rehearing amounts to nothing but a pile of recycled arguments, which have already been considered and rejected (repeatedly) by the Commission over the past three years.

Specifically, OCC's rehearing request rehashes the same arguments that the Commission has already considered and rejected in this case, in Sprint's Elec. Alt. Reg. proceeding,¹ and, originally, in the Commission's generic 00-1532 docket which established the Elec. Alt. Reg.

¹ See *In the Matter of the Application of United Telephone Company of Ohio dba Sprint for Approval of an Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Admin. Code, Finding and Order* (Oct. 3, 2002), Entry on Rehearing (Nov. 7, 2002).

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rules.² Consequently, CenturyTel-Ohio will provide an abbreviated response and refer the Commission to its pleadings already before the Commission in this docket.³

Reply To Assignments of Error 1-3

Generally, OCC's first three assignments of error are directed at the Commission's purported failure to base its decision on specific evidence of competition in CenturyTel-Ohio's service territory. Specifically, OCC argues that rehearing is appropriate because there was no showing that each and every one of CenturyTel-Ohio's non-basic services are subject to competition or that customers have reasonably available alternatives for those services and, as a result, the Order is unlawful because there is no evidence upon which the Commission could base its determination.

But OCC misses the central point of the Elec. Alt. Reg. rules — CenturyTel-Ohio didn't need to make such a showing in this case. The Commission addressed these matters in Case No. 00-1532 on an industry- and state-wide basis in order to avoid repeating that debate in every Elec. Alt. Reg. proceeding. Indeed, one of the purposes of "off the self" Elec. Alt. Reg. is to avoid the type of protracted litigation that OCC argues is required. Obtaining an Elec. Alt. Reg. Plan is purposely straightforward and occurs through a streamlined process.

The Elec. Alt. Reg. Plan set forth in Chapter 4901:1-4 "is available to any incumbent local exchange carrier (ILEC) that is not interested in pursuing an individual company-designed application for alternative regulation pursuant to Case No. 92-1149-TP-COI." Rule 4901:1-4-01(A) (emphasis added). Adoption of the Elec. Alt. Reg. Plan enables the ILEC to operate under

² See *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Opinion and Order (Dec. 6, 2001), Entry on Rehearing (Apr. 25, 2004).

³ CenturyTel of Ohio, Inc.'s Motion to Quash Subpoenas and Request for a Cease and Desist Order, dated Feb. 4, 2004; CenturyTel of Ohio, Inc.'s Memorandum Contra OCC's Motion to Dismiss or Motion for Stay, dated Feb. 6, 2004; CenturyTel of Ohio, Inc.'s Response to OCC's Request for a Hearing, dated Feb. 10, 2004.

the retail service requirements developed for competitive telephone companies. Rule 4901:1-4-01(B).

Division (A) of Rule 4901:1-4-02 provides that “an ILEC can opt into this elective alternative regulation plan at any time by making the appropriate filing with the Commission.”

Division (A) defines an “appropriate filing” as one that includes the following four components:

- (1) a completed application form as may be modified from time to time by the Commission;
- (2) a proposal to cap basic local exchange service rates at existing levels as an alternative to rate base/rate-of-return regulation, pursuant to Section 4927.04, Ohio Revised Code, and to price all other telecommunication services in accordance with Rule 4901:1-4-05(C) Ohio Admin. Code, and Section 4927.03, Revised Code;
- (3) all necessary tariff modifications to implement the plan, to be prefiled with the Commission’s Staff 30 days before docketing the application; and
- (4) a plan as to how the ILEC will meet all of the commitments set forth in Rule 4901:1-4-05, Ohio Admin. Code.

An ILEC’s application is automatically approved on the 46th day after it is filed, unless it is otherwise suspended by the Commission. Rule 4901:1-4-02(E).

CenturyTel-Ohio’s Application satisfied all four components of an “appropriate filing” under Rule 4901:1-4-02(A), and the Commission appropriately ordered that it be deemed approved on March 2, 2004 (the 46th day after its filing). This is precisely the result the rules call for when an ILEC elects to utilize the rules to get the “off the shelf” Elec. Alt. Reg. Plan.

The Commission, consequently, correctly rejected OCC’s arguments in its Order (¶¶ 17-18), and rehearing should be denied.

Reply To Assignment of Error 4

OCC contends that because CenturyTel-Ohio is a “rural telephone company,” it is exempt from competition pursuant to § 251(f)(1) of the 1996 Act and, as a result, the

Commission could not possibly have found that all CenturyTel-Ohio's non-basic services are subject to competition or that customers have reasonably available alternatives to those services. See OCC App. at 6-9. OCC, evidently, continues to ignore the key fact that since the Commission approved CenturyTel-Ohio's Elective Alt. Reg. Plan, the Commission considers the Company to be subject to Division (F) of Rule 4901:1-6-26, Ohio Admin. Code, and, consequently, to have given up any opportunity to maintain a rural telephone company exemption under § 251(f)(1) of the 1996 Act. This fact alone renders OCC rural exemption argument moot.

Even so, OCC forth assignment of error gets the law concerning § 251(f)(1) completely wrong. Before it adopted the Elective Alt. Reg. Plan Rules, the Commission had always treated the rural telephone company exemption as provisional, essentially placing the burden on the rural telephone conference to apply to the Commission for permission on a case-by-case basis to use the exemption. See, e.g., Divisions (A) through (E) of Rule 4901:1-6-26. The OCC has this presumption backwards in its discussion at pages 6-9. CenturyTel-Ohio never made an application to the Commission seeking permission to use its rural telephone company status as an exemption from competition in general, or, in particular, as a shield from § 251(c) of the Act.

In conclusion, rehearing on this point should be denied because OCC's argument is both moot and without merit.

Reply To Assignments of Error 5-6

OCC asserts, at page 9, that the Order is unlawful because CenturyTel-Ohio never demonstrated that it was "entitled to increased rates." Further, OCC states that the Order is unlawful because the Commission only required that CenturyTel-Ohio provide its customers with 15-day notice of price increases. Neither of these arguments merit rehearing.

First, the Elec. Alt. Reg. rules do not contain a requirement that the applicant for Elec. Alt. Reg. make any showing regarding its earnings. *See* 4901:1-4, Ohio Admin. Code. Further, R.C. Chapter 4927, the statutory authority for the Commission's adaptation of the Elec. Alt. Reg. rules, does not require that the Commission evaluate a company's earning levels in order to determine whether alternative regulation is in the public interest. The fact that the OCC's thinks differently on this issue does not merit rehearing.

Second, the Commission's determination that a 15-day notice is adequate is consistent with the relevant customer notice provisions in the Commission's Competitive Retail Service Rules. In particular, the 15-day notice concerns price increases for non-basic Tier 2 services. The rule concerning Tier 2 services, Rule 4901:1-6-21(G), provides that (1) rate changes are subject to a 0-day notice filing requirement in the TRF docket and (2) that rate increases require customer notice in accordance with Rule 4901:1-6-17, Ohio Admin. Code. The customer notice rule, Rule 4901:1-6-17, states, "For cases in which the Commission review period is 30 days or less, the notice must be sent to customers at least 15 days prior to filing the application with the Commission." Because the TRF docket is subject to 0-day notice, a 15-day notice is required for Tier 2 service price increases; thus, the Order is consistent with the Commission's rules.

Additionally, OCC's contention, at p. 10, that a 15-day notice does not provide customers an adequate opportunity to drop a service rather than pay a higher price is conclusory and baseless. OCC provides no rationale, nor could it, to show that a customer is unable to determine within 15 days whether to continue receiving a non-basic service that is subject to a future price increase.

In sum, rehearing should be denied on both these points.

Reply To Assignments of Error 7-8

OCC alleges that the Order is unlawful because there was never a determination, nor could there have been according to OCC, that CenturyTel-Ohio's application was in the public interest. In an attempt to advance its public interest criticism of the Order, OCC questions the level and adequacy of CenturyTel-Ohio's commitments under the Elec. Alt. Reg. rules.

There is nothing more to be said in response to OCC's public interest arguments that already hasn't been articulated (repeatedly). At paragraph 20 of the Order, the Commission succinctly stated, "The Commission has previously concluded in 00-1532 that the elective alternative regulation plan satisfies the public interest test of Section 4927.03, Revised Code, and satisfies the state's policy goals outlined in Section 4927.02, Revised Code." CenturyTel-Ohio's application satisfied the requirements of the Commission's Elec. Alt. Reg. rules. Thus, it is in the public interest. No further findings are required by either the Elec. Alt. Reg. rules or R.C. Chapter 4927.03.

As stated in CenturyTel-Ohio's February 10, 2004 Response to OCC's Request for a Hearing, OCC's incremental benefits arguments concerning CenturyTel-Ohio's commitments should be rejected. The point is that CenturyTel-Ohio's has made the requisite commitments under 4901:1-4-05 in its Application. Nothing else matters on this topic. OCC, remarkably, takes issue with the fact that CenturyTel-Ohio has not sought a retail rate increase since 1986, that CenturyTel-Ohio has a quality Lifeline program, and that CenturyTel-Ohio has aggressively deployed advanced services in its service territory. The Commission rejected, yet again, OCC's absurd arguments that CenturyTel-Ohio should be punished for its pre-application activities. See Order at ¶ 21. The Commission rightfully determined that CenturyTel-Ohio's Application is in the public interest, and rehearing is not warranted on this issue.

Reply To Assignments of Error 9-12

Finally, OCC contends that the Commission erred by denying OCC's motion for stay, or in the alternative, motion to dismiss, and it erred by denying OCC's motion for a hearing. OCC also argues that approval of CenturyTel-Ohio's Application was unlawful because it was approved under a rule, Rule 4901:1-4-02(D), which requires interested parties to show by clear and convincing evidence that extraordinary circumstances exist which establish reasonable grounds for a hearing. Further, OCC disputes the Commission's determination that OCC did not satisfy the requisite showing for a hearing.

The Commission properly rejected OCC's motion for stay or dismissal. After recognizing that OCC was merely rehashing the same arguments, yet again, that it had made in prior proceedings the Commission appropriately stated, "The Commission's orders in 02-2117 and 00-1532 fully address OCC's arguments raised in both 00-1532 and this proceeding and there is no reason for the Commission to repeat the same analyses and conclusions set forth in those orders." Order at ¶18. OCC raises no new arguments in its application (OCC App. at 13), and rehearing should be denied.

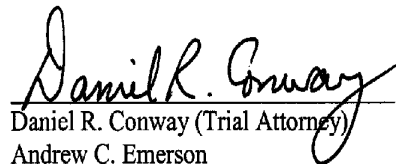
Similarly, OCC states nothing new to demonstrate by clear and convincing evidence that extraordinary circumstances exist, which would require a hearing. OCC, instead, continues to complain about the extraordinary circumstances standard. The Commission appropriately rejected OCC's request for a hearing at ¶ 21 of its Order, and OCC has not demonstrated that rehearing is needed on this point.

Conclusion

For the reasons set forth above and in CenturyTel-Ohio's other pleadings in this docket, the Commission should deny OCC's application for rehearing.

Dated: April 5, 2004

Respectfully submitted,

A handwritten signature in cursive script, reading "Daniel R. Conway". The signature is written in black ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I certify that I served a copy of CenturyTel of Ohio, Inc.'s Reply to OCC's Application for Rehearing upon the following counsel for the parties, by electronic mail and first-class mail, postage prepaid, this 5th day of April 2004.

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