

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of)
Chapters 4901-3 and 4901-9 of the Ohio) Case No. 00-1540-AU-ORD
Administrative Code.)

ENTRY

The Commission finds:

- (1) Chapter 4901-3, Ohio Administrative Code (O.A.C.), contains the rules governing the conduct of proceedings before the Commission. Chapter 4901-9, O. A. C., contains procedures for complaint cases before the Commission.
- (2) By entry issued August 31, 2000, the Commission proposed certain amendments to the rules in those chapters. Interested parties were directed to file comments relating to the proposed amendments on or before September 15, 2000.
- (3) No comments were filed in this docket concerning the proposed amendments to the rules in Chapter 4901-3, O.A.C. Those proposed amendments should be adopted.
- (4) Comments about the proposed amendments to Chapter 4901-9 were filed by Ameritech Ohio (Ameritech) and The Ohio Consumers' Counsel (OCC).
- (5) Under proposed paragraph (D) of Rule 4901-9-01, O.A.C., a person who files a complaint against a public utility and who faces termination of service by that utility may request, in writing, the Commission's assistance to prevent termination of service during the pendency of the complaint. The complainant must explain why he or she believes that service is about to be terminated and why the termination should not occur. A complainant making this type of request must agree to pay to the utility all amounts that are not in dispute during the pendency of the complaint.
- (6) Both Ameritech and OCC believe that the proposed language fails to indicate what action the Commission will take if a complainant facing termination of service requests

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Commission intervention. The Commission anticipates issuing an entry or an oral ruling stating whether the complainant's service may or may not be terminated. The proposed amendment has been modified to state the Commission's intent.

- (7) Ameritech questions what would happen if the Commission rules against the complainant in an opinion and order or the complainant failed to pay the amount that is not in dispute. If the Commission rules against the complainant, then obviously the matter is no longer in dispute and the complainant is responsible for payment of the amount in dispute. If the complainant, during the course of the proceeding, fails to pay the amount not in dispute, then the complainant has failed to abide by the Commission's rule and its specific ruling on the request for service to be maintained. Under such circumstances, after notice to the Commission and the complainant, service may be terminated.
- (8) Ameritech also believes that the proposed language would allow customers who contact the Commission to receive different assistance from customers who contact the utility, OCC, or another government agency. The proposed paragraph does not apply to persons who "call" the Commission. We assume that Ameritech is referencing the Commission's informal complaint proceeding. The Commission's proposed amendment to this rule only applies when a subscriber has filed a formal complaint.
- (9) Ameritech contends that the "bona fide" dispute provisions of Rule 4901:1-5-19(I)(3), O.A.C. (Minimum Telephone Service Standards), are sufficient to protect consumer interests. The rule provides, in relevant part, that a subscriber's local exchange telephone service may not be disconnected for failure to pay any amount that is in bona fide dispute, provided that the subscriber pays the undisputed amount of the bill. The Commission's proposed language is similar to Rule 4901:1-5-19(I)(3), O.A.C., but it would be applicable to all utilities and to formal complaints.
- (10) Existing Paragraph (D) (now proposed paragraph (E)) of Rule 4901-9-01, O.A.C., states that, when a public utility, against which a complaint has been made, files an answer or motion saying that the complaint has been satisfied or the case

settled, the complainant must file a written response within 15 days following service of the answer or motion. The response should state whether the complainant agrees or disagrees with the utility's assertions and whether the complainant wishes to pursue the complaint. If no response is filed within 15 days, the Commission may presume that satisfaction or settlement has occurred and may dismiss the complaint.

- (11) Proposed paragraph (E) of Rule 4901-1-09, O.A.C., would retain the above provisions and include additional requirements. The Commission proposed increasing the response time from 15 to 20 days. There were no comments concerning this proposal. It shall be adopted.
- (12) Also under the Commission's proposal, a public utility filing an answer or motion, as described above, must also include a statement in its filing that informs the complainant that he/she has 20 days to file a written response agreeing or disagreeing with the utility's assertions, or the Commission may presume that satisfaction or settlement has occurred and the complaint could be dismissed. The Commission's proposed language is intended to insure that a complainant receives notice about the requirements of the Commission's rule. Ameritech believes that it is unnecessary to require inclusion of the aforementioned language in "filings" with the Commission. Instead, Ameritech suggests that the utility should be permitted to inform the complainant of his or her rights in a cover letter sent with a service copy of the pleadings. Under Ameritech's proposal, the cover letter will inform the customer that if he or she does not agree with the utility's claim that the complaint has been settled or satisfied, the customer can file an objection with the Commission within twenty days. Ameritech's proposal will accomplish the Commission's intent. Proposed paragraph (E) will be amended to provide that the utility's filing shall include or be accompanied by another document that provides the requisite notice to the complainant.
- (13) Finally, Ameritech proposes that the Commission should amend Rule 4901-9-01, O.A.C., to indicate that the Commission will initially review filed, formal complaints involving service or billing issues in an informal process before using formal procedures to determine whether there are reasonable grounds to proceed with a complaint. Under

Ameritech's proposal, the Commission's Legal Department, upon the filing of a complaint, shall first determine whether it has been the subject of an informal investigation by the Commission's Public Interest Center (PIC). If it is determined that an informal investigation has not occurred, the complaint would be referred to the PIC and the complaint served upon the public utility. The existing requirement that the public utility must file an answer within twenty days would be suspended pending the outcome of the PIC's informal investigation. In presenting its reasons for this proposal, Ameritech states that many complaints from individual customers are resolved through informal company and PIC procedures. Through its proposed Rule, Ameritech hopes to lessen the time and paperwork brought about when a filed complaint is reviewed through formal procedures only.

- (14) During the initial review process of a case, the Commission's Legal Department does refer some cases to the PIC for review and informal processing, especially if the case seems ripe for settlement. When a complaint case is filed, nothing prevents a public utility from contacting the Legal Department or the PIC or the complainant to attempt to process the issues informally. However, the Commission prefers that the formal case process proceed, even if an attempt is being made to resolve the issues informally, so that the utility will file its answer and the case can proceed to formal settlement discussions.

It is, therefore,

ORDERED, That the amended Rules 4901-3-01, 4901-3-02, and 4901-9-01 of the Ohio Administrative Code attached to this Entry be adopted. It is, further,

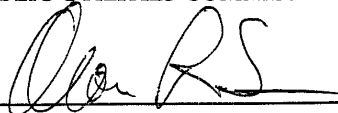
ORDERED, That the amended rules be effective as of the earliest date possible. It is, further,

ORDERED, That a copy of this entry and the attached rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Director of the Ohio Legislative Service Commission. It is, further,

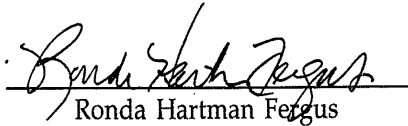
ORDERED, That a copy of this entry be served upon all public utilities subject to the jurisdiction of this Commission, the Ohio Consumers' Counsel, the Ohio Telecommunications Industry Association, the Ohio Trucking Association, the Ohio Railroad Association, the Ohio Gas Association, the Ohio Electric Institute, the Ohio Cable

Television Association, the Ohio Manufacturers Association, the Ohio Municipal League, the cities of Cleveland, Columbus, Cincinnati, Dayton, and Toledo, the chair of the Ohio State Bar Association Public Utilities Committee, the Ohio Environmental Council, and the Legal Aid Societies of Cleveland, Columbus, Cincinnati, Dayton, and Toledo.

THE PUBLIC UTILITIES COMMISSION OF OHIO



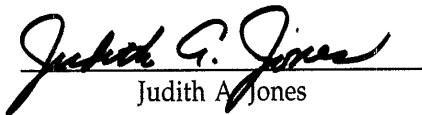
Alan R. Schriber, Chairman



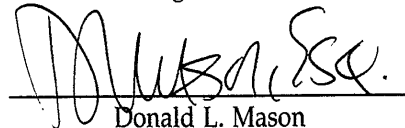
Ronda Hartman Fergus



Craig A. Glazer



Judith A. Jones



Donald L. Mason

JML/vrm

Entered in the Journal
SEP 28 2000

A True Copy

Gary E. Vigorito
Secretary

4901-3

Conduct of Proceedings Before
The Public Utilities Commission of Ohio

4901-3-01 Commission meetings.

4901-3-02 Photographing, filming, and recording.

4901-3-01 Commission meetings.

(A) Open meetings.

- (1) All meetings of the public utilities commission at which official action is taken and formal deliberation upon official business is conducted shall be opened to the public. All resolutions, rules, or formal action of any kind shall be adopted in an open meeting of the public utilities commission. A majority of the members of the public utilities commission shall constitute a quorum for the purpose of conducting business.
- (2) The public utilities commission may hold an executive session for the purpose of the consideration of a matter contained in division (G) of section 121.22 of the Revised Code. ~~Such~~ AN executive session may be held only at a meeting for which notice has been given in accordance with paragraph (C) of this rule and only after a majority of a quorum of the public utilities commission determines, by a roll call vote, to hold such a session.

(B) Types of meetings.

- (1) The public utilities commission generally meets ~~on Wednesday~~ TUESDAY to discuss issues in individual cases and on Thursday to vote on orders and entries to be issued in cases. The commission may, in its discretion, schedule meetings on other days to discuss and vote on entries and orders in pending cases. ~~The~~ UNLESS OTHERWISE NOTICED BY THE COMMISSION, meetings are held at the offices of the "Public Utilities Commission, 180 East Broad Street, Columbus, Ohio." The starting time of the meetings will be shown on the agenda issued for the meetings.
- (2) ~~A special meeting is one in which the agenda for a meeting is available for the public later than Thursday of the preceding week but more than twenty-four hours prior to the start of the meeting.~~
- (3) An emergency meeting is one in which ~~the agenda for a meeting is available for~~ NOTICED TO the public less than twenty-four hours prior to the start of the meeting.

(C) Notice of meetings.

- (1) Any person may determine the time, place, and matters on the agenda for a commission meeting scheduled to consider cases or a specific or general topic by calling ~~telephone number~~ THE COMMISSION'S LEGAL DEPARTMENT AT 614-466-6843 during normal business hours or by consulting the information rack located within the commission's docketing division located on the tenth floor of the commission's offices, ~~"180 East Broad Street, Columbus, Ohio."~~ Any person with computer access to the commission's public docketing information system (PDIS) may access the

~~current agenda.~~ The meeting agendas are also available ~~through~~ ON the commission's world-wide web page SITE (WWW.PUC.STATE.OH.US) ~~on the internet.~~ Upon request to the ~~commission~~ COMMISSION'S secretary LEGAL DEPARTMENT, the commission will distribute agendas, as they become available, via e-mail ~~to any internet e-mail address~~ OR FAX free of charge. The agendas for a regular meeting scheduled for the following week will USUALLY be available by close of business on the preceding Thursday.

- (2) ~~Copies of the agenda for a special meeting will be available in the information racks at least twenty-four hours prior to the start of the meeting.~~
- (3) Copies of the agenda for an emergency meeting, if time permits for the preparation of an agenda, will be available in the information racks AND ON THE COMMISSION'S WEB SITE AND DISTRIBUTED BY E-MAIL AND FAX as early as possible prior to the start of the meeting.

~~(D) SUBSCRIPTION SERVICES.~~

- (1) ~~Upon request and payment of an annual fee, any person may receive advance notification through the mail or by FAX of the time, place, and agenda for the regular scheduled meetings of the commission. Notice of the following week's regular scheduled meetings shall be mailed or faxed to those persons who have requested to receive mailed or faxed notice no later than the Thursday prior to the commission meetings beginning the next Monday.~~
- (2) ~~Upon request and payment of an annual fee, any person may receive advance notification by telephone call or by FAX of the time, place, and agenda for special scheduled meetings of the commission. Notice of special scheduled meetings shall be called or faxed to those persons who have requested to receive telephone or faxed notice not less than twenty-four hours prior to the start of the meeting.~~
- (3) ~~If an emergency meeting of the commission is scheduled, if time permits, notice of the meeting will be made by telephone call or by FAX as soon as possible following the scheduling of the meeting to all persons who have requested notice of special scheduled meetings.~~
- (4) ~~If notice by telephone is made pursuant to paragraph (D)(2) or (D)(3) of this rule, such notice shall be complete if a message has been left with a representative of the person to whom notice is being provided or if, after reasonable effort, the commission's designated caller has been unable to provide such notice. Calls will be made during the normal business hours of the public utilities commission.~~
- (5)(3) Requests for information concerning subscription services TO RECEIVE COMMISSION MEETING AGENDAS BY E-MAIL OR FAX should be

directed to "~~Commission Secretary~~ LEGAL DEPARTMENT, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, OR BY CALLING THE LEGAL DEPARTMENT AT 614-466-4843."

~~(E)~~ Notice to news media.

- ~~(1) Members of the news media who wish to obtain notice, by mail or FAX, of the commission's regularly scheduled meetings shall submit a written request to the commission's media liaison. The agendas for such meetings shall be mailed or faxed by the Thursday, or hand delivered on the Friday preceding the commission meetings beginning the next Monday.~~
- ~~(2) Members of the news media who wish to obtain notice, by telephone call or FAX, of the commission's special or emergency meetings shall submit a written request to the commission's media liaison.~~
- ~~(3) The address of the media liaison is: "Media Liaison, Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215 3793."~~

~~(F)~~(D) Agendas.

- (1) The agenda for commission meetings in which specific cases are to be considered shall include the case number and a brief description of the case name. If a meeting is scheduled to consider a specific or general topic or subject matter, the agenda will only give the topic or subject matter to be discussed.
- (2) If a case, topic, or subject matter needs to be added to an agenda after the agenda has been issued, the additions shall be noticed in the same manner as if a special or AN emergency meeting were scheduled, i.e., ~~the case, topic, or subject matter shall be called or faxed to those persons who have requested notification pursuant to paragraph (D) of this rule~~ IF TIME PERMITS, THE ADDITIONS WILL BE AVAILABLE IN THE INFORMATION RACKS AND ON THE COMMISSION'S WEB SITE AND DISTRIBUTED BY E-MAIL AND FAX AS EARLY AS POSSIBLE PRIOR TO THE START OF THE MEETING.

~~(G)~~(E) Minutes.

- (1) Minutes of the commission's meetings during a week shall be considered and adopted at the next regularly scheduled meeting at which the commission votes on orders and entries to be issued in cases.
- (2) Upon adoption, the secretary of the commission shall be responsible for maintaining the minutes.

Effective:

119.032 Review date: 9/30/05, 9/30/00

Certification

Gary Vigorito, Secretary

Date

Promulgated under R. C. Sec. 111.15

Authorized by R.C. Sec. 4901.13

Rule amplifies R.C. Sec. 121.22, 4901.13

Prior effective dates: 4/4/96, 10/26/91, 4/20/89, 11/17/88,
12/16/77, 12/21/76

4901-3-02 Photographing, filming, and recording.

Persons may videotape, photograph, film, or record commission meetings and public hearings in accordance with the following procedures, which are promulgated to assure decorum and fairness to all parties, consistent with the goal that the public be fully informed.

- (A) Any person may videotape, film, record, or photograph commission meetings and public hearings.
- (B) ~~Stationary cameras, lighting, or other auxiliary equipment must be set up and broken down prior to, during a recess of, or upon completion of the meeting or hearing.~~ The person in charge of the A meeting or hearing may, if deemed necessary, designate the area where ~~such~~ STATIONARY CAMERAS, LIGHTING, OR OTHER AUXILIARY equipment is to be located.
- (C) A person operating a portable or hand-held camera shall remain seated while filming or stand in the back or along the sides of the room. The person shall not block the view of those seated in the room.
- (D) Unless preauthorized approval is obtained from the person in charge of the meeting or hearing, tape recorders and other audio equipment (e.g., microphones) shall be located at the operator's seat during the meeting or hearing.
- (E) ~~If DURING~~ a hearing or meeting ~~is televised~~, reporters or commentators describing the events shall not be located within the room where the meeting or hearing is being conducted.
- (F) The use of cellular phones or other voice-related devices in a room where a meeting or hearing is being conducted is prohibited. CELLULAR PHONES AND BEEPERS SHALL NOT TRANSMIT AN AUDIO NOTIFICATION AFTER THE START OF A MEETING OR HEARING.
- (G) A commissioner, hearing examiner, or the commission employee responsible for conducting a meeting or hearing has the authority to enforce, waive, or modify any of the above procedures when deemed necessary to preserve the decorum or fairness of a commission proceeding and to exclude from the meeting or hearing any person who violates any of the procedures set forth in this rule or fails to follow a directive.

4901-3-02

Effective:

119.032 Review date: 9/30/05, 9/30/00

Certification

Gary Vigorito, Secretary

Date

Promulgated under R. C. Sec. 111.15

Authorized by R.C. Sec. 4901.13

Rule amplifies R.C. Sec. 4901.13

Prior effective dates: 4/4/96, 12/16/77

4901-9

Procedure in Complaint Proceedings

_ 4901-9-01 Complaint proceedings.

4901-9-01 Complaint proceedings.

- (A) All complaints filed under section 4905.26 of the Revised Code, except complaints filed by a public utility concerning a matter affecting its own product or service, shall be in writing and shall contain the name of the public utility complained against, a statement which clearly explains the facts which constitute the basis of the complaint, and a statement of the relief sought. SAMPLE COMPLAINT FORMS MAY BE OBTAINED BY CONTACTING THE COMMISSION'S PUBLIC INTEREST CENTER. If discrimination is alleged, the facts ~~which~~ THAT allegedly constitute discrimination must be stated with particularity. Upon receipt of such a complaint, the docketing division shall serve a copy of the complaint upon the public utility complained against, together with instructions to file an answer with the commission in accordance with the provisions of this rule. The public utility complained against shall file its answer with the commission within twenty days, or such period of time directed by the commission, the legal director or attorney examiner assigned to the case, after the mailing of the complaint, and shall serve a copy upon all parties in accordance with rule 4901-1-05 of the Administrative Code. An answer must be filed in accordance with this paragraph, whether or not the public utility files a motion to dismiss the complaint or any other motion in response to the complaint.
- (B) Each defense to a complaint shall be asserted in an answer. In addition, the following defenses or assertions may, at the option of the public utility complained against, also be raised by motion:
- (1) Lack of jurisdiction over the subject matter;
 - (2) Lack of jurisdiction over the person;
 - (3) Failure to set forth reasonable grounds for complaint; and
 - (4) Satisfaction of the complaint or settlement of the case.
- (C) The public utility shall state in its answer, in short and plain terms, its defenses to each claim asserted, and shall admit or deny the allegations upon which the complainant relies. If the public utility is without sufficient knowledge or information to form a belief as to the truth of an allegation, it shall so state and this has the effect of a denial. If the public utility intends in good faith to deny all of the allegations in the complaint, it may do so by general denial. If it does not intend to deny all of the allegations in the complaint, it shall either make specific denials of designated allegations or paragraphs, or generally deny all allegations except those allegations or paragraphs ~~which~~ THAT it expressly admits. Unless otherwise ordered by the commission, the legal director, or the attorney examiner assigned to the case, all material allegations in the complaint which are not denied in the answer shall be deemed admitted for purposes of the proceeding.

(D) IF A PERSON FILING A COMPLAINT AGAINST A PUBLIC UTILITY IS FACING TERMINATION OF SERVICE BY THE PUBLIC UTILITY, THE PERSON MAY REQUEST, IN WRITING, THAT THE COMMISSION PROVIDE ASSISTANCE TO PREVENT THE TERMINATION OF SERVICE DURING THE PENDENCY OF THE COMPLAINT. THE PERSON MUST EXPLAIN WHY HE OR SHE BELIEVES THAT SERVICE IS ABOUT TO BE TERMINATED AND WHY THE PERSON BELIEVES THAT THE SERVICE SHOULD NOT BE TERMINATED. A PERSON MAKING A REQUEST FOR ASSISTANCE MUST AGREE TO PAY DURING THE PENDENCY OF THE COMPLAINT ALL AMOUNTS TO THE UTILITY THAT ARE NOT IN DISPUTE. THE COMMISSION WILL ISSUE A RULING ON THE REQUEST.

~~(D)~~(E) If the public utility complained against files an answer or motion which asserts that the complaint has been satisfied or that the case has been settled, the complainant shall file a written response within ~~fifteen~~ TWENTY days after the service of the answer or motion, indicating whether the complainant agrees or disagrees with the utility's assertions, and whether he or she wishes to pursue the complaint. If no response is filed within the prescribed period of time, the commission may presume that satisfaction or settlement has occurred and dismiss the complaint. ANY FILING BY A UTILITY THAT ASSERTS THAT A COMPLAINT HAS BEEN SATISFIED OR THAT THE CASE HAS BEEN SETTLED SHALL INCLUDE A STATEMENT OR BE ACCOMPANIED BY ANOTHER DOCUMENT THAT STATES THAT, PURSUANT TO A COMMISSION RULE, THE COMPLAINANT HAS TWENTY DAYS TO FILE A WRITTEN RESPONSE AGREEING OR DISAGREEING WITH THE UTILITY'S ASSERTIONS AND THAT, IF NO RESPONSE IS FILED, THE COMMISSION MAY PRESUME THAT SATISFACTION OR SETTLEMENT HAS OCCURRED AND DISMISS THE COMPLAINT.

Effective: _

119.032 Review date: 9/30/05, 9/30/00

Certification

Gary Vigorito, Secretary

Date

Promulgated under R. C. Sec. 111.15
Authorized by R.C. Sec. 4901.13
Rule amplifies R.C. Sec. 4901.13, 4905.26
Prior effective dates: 4/4/96, 3/1/81, 1/20/63

SERVICE NOTICE

PAGE 1

CASE NUMBER 00-1540-AU-ORD
CASE DESCRIPTION AMENDMENT/CHAP. 4901-3 & 4901-9
DOCUMENT SIGNED ON September 28, 2000
DATE OF SERVICE Oct 2, 2000

PERSONS SERVED

PARTIES OF RECORD

ATTORNEYS

APPLICANT

AMENDMENT CHAPTERS 4901-3 AND
4901-9, OHIO ADMINISTRATIVE CODE

NONE

INTERVENOR

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