**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Review of Chapter 4901:1-6 of the Ohio Administrative Code, Regarding Telephone Company Procedures and Standards.  | )))) | Case No. 14-1554-TP-ORD |

**APPLICATION FOR REHEARING**

**BY**

**EDGEMONT NEIGHBORHOOD COALITION,**

**LEGAL AID SOCIETY OF SOUTHWEST OHIO LLC,**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL,**

**OHIO POVERTY LAW CENTER,**

**PRO SENIORS, INC., AND**

**SOUTHEASTERN OHIO LEGAL SERVICES**

This case is about the consumer protections necessary for telephone service provided to Ohioans. On November 30, 2016, the Public Utilities Commission of Ohio (“PUCO”) issued rules for providing telephone service to consumers in Ohio.[[1]](#footnote-2) Some of the rules provide considerable consumer protections. The Edgemont Neighborhood Coalition,[[2]](#footnote-3) Legal Aid Society of Southwest Ohio LLC,[[3]](#footnote-4) the Office of the Ohio Consumers’ Counsel,[[4]](#footnote-5) Ohio Poverty Law Center,[[5]](#footnote-6) Pro Seniors, Inc.,[[6]](#footnote-7) and Southeastern Ohio Legal Services[[7]](#footnote-8) (collectively, “Consumer Groups”) are appreciative of those rules. However, several rules do not adequately protect consumers. So, Consumer Groups file this Application for Rehearing of the PUCO’s Order.

The PUCO’s Order is unjust, unreasonable, and unlawful because:

1. The definition of “reasonable and comparatively priced voice service” in Draft Rule 1(BB) is unreasonably vague regarding which threshold would apply for determining that a service is presumptively deemed competitively priced, subject to rebuttal. In addition, the burden should be on the incumbent carrier to show through clear and convincing evidence that the presumption should not apply.
2. The definition of “willing provider” in Draft Rule 1(QQ) is unlawful because it does not specify that the willing provider’s service be provided at the customer’s residence, as required by R.C. 4927.10(B)(1)(a).
3. Draft Rule 1(QQ) is also unreasonable because it ignores situations where a willing provider is identified after the incumbent carrier provides its 120-day notice to customers and the PUCO.
4. Draft Rule 21(F) is unreasonable because it does not protect consumers against the loss of voice service by allowing the sole provider of voice service in an area to withdraw or abandon service on only 30 days’ notice.
5. Draft Rule 21(G) is unreasonable because it does not require the entire Draft Rule 21 process if the PUCO determines that residential customers will have no access to emergency services.
6. The PUCO unreasonably rejected the additional notices suggested by Consumer Groups to protect customers.
7. Draft Rule 21(A) unlawfully omitted that the collaborative shall review the number and characteristics of basic local exchange service customers in Ohio, a requirement of section 749.10 of amended substitute House Bill 64 of the 131st General Assembly (“HB 64”).
8. The Order unreasonably limits “legal counsel” as the only authorized persons for filing a petition signifying that the customer would be without alternative service if the incumbent carrier withdraws basic service.
9. The PUCO unreasonably granted incumbent carriers the ability to increase basic service installation and reconnection fees charged to customers through a tariff amendment application, subject to an undefined appropriateness review.
10. The PUCO unreasonably determined that incumbent carriers should not be required to automatically enroll Lifeline customers.
11. The PUCO unreasonably rejected Consumer Groups’ recommendation that Disability Financial Assistance be inserted as a qualifying program for the purpose of Lifeline in Draft Rule 19(H)(l)(h).
12. The PUCO unreasonably deleted previous Ohio Adm. Code 4901:1-6-19(J), which facilitated coordination among the PUCO, social service agencies, and telephone companies in enrolling Lifeline customers.
13. The PUCO unlawfully determined that Lifeline customers should have only 30 days to submit acceptable documentation of continued eligibility instead of the 60 days required by Ohio law.

The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

*/s/ Ellis Jacobs*

Ellis Jacobs (0017435), Counsel of Record

Advocates for Basic Legal Equality, Inc.

130 West Second St., Suite 700 East

Dayton, Ohio 45402

Telephone: 937-535-4419

ejacobs@ablelaw.org

(willing to accept service by e-mail)

*Attorney for Edgemont Neighborhood Coalition*

*/s/ Noel M. Morgan*

Noel M. Morgan (0066904), Counsel of Record

Senior Attorney

Legal Aid Society of Southwest Ohio LLC

215 E. Ninth St.

Cincinnati, Ohio 45202

Telephone: 513-362-2837

nmorgan@lascinti.org

(willing to accept service by e-mail)

BRUCE WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Terry L. Etter*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Terry L. Etter (0067445), Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter direct)

terry.etter@occ.ohio.gov

(willing to accept email service)

*/s/ Michael R. Smalz*

Michael R. Smalz (0041897), Counsel of Record

Senior Attorney

Ohio Poverty Law Center

555 Buttles Avenue

Columbus, Ohio 43215

Telephone: 614-824-2502

msmalz@ohiopovertylaw.org

(willing to accept service by e-mail)

*/s/ Michael Walters*

Michael Walters (0068921), Counsel of Record

Legal Hotline Managing Attorney

Pro Seniors, Inc.

7162 Reading Road, Suite 1150

Cincinnati, Ohio 45237

Telephone: (513) 458-5532

mwalters@proseniors.org

(willing to accept service by e-mail)

*/s/ Peggy P. Lee*

Peggy P. Lee (0067912), Counsel of Record

Senior Staff Attorney

Southeastern Ohio Legal Services

964 East State Street

Athens, Ohio 45701

Telephone: 740-594-3558

plee@oslsa.org

(willing to accept service by e-mail)

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**BEFORE**

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**MEMORANDUM IN SUPPORT**

# I. INTRODUCTION

Ohioans should receive adequate telephone service at reasonable prices.[[8]](#footnote-9) Adequate service means, among other things, that consumers have rights in their dealings with telephone companies. Ohio law and PUCO rules set out those rights.[[9]](#footnote-10)

The PUCO must review rules every five years to determine whether to continue the rules without change, to amend the rules, or to rescind the rules.[[10]](#footnote-11) The PUCO began this proceeding to review the rules in Ohio Administrative Code Chapter 7 concerning the relationship between consumers and telephone companies. After receiving comments on the PUCO Staff’s proposed changes to the rules, the Ohio General Assembly passed HB 64 in 2015. Among other things, HB 64 established new procedures for Ohio telephone companies to stop providing basic local exchange service (“basic service” or “BLES”) to customers. The PUCO Staff proposed rules to implement HB 64, and the PUCO received comments on the proposed rules.

On November 30, 2016, the PUCO issued its Order adopting Draft Rules for Chapter 7. While the Draft Rules contain many benefits for Ohioans in their dealings with telephone companies, the Draft Rules can be improved to better protect consumers. To that end, Consumer Groups file this Application for Rehearing.

# II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.” In this proceeding, Consumer Groups filed Comments on February 6, 2015 and October 26, 2015. Consumer Groups also filed Reply Comments in this case on March 6, 2015 and November 9, 2015.

R.C. 4903.10 requires that an application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.” In addition, Ohio Adm. Code **4901-1-35**(A) states: “An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing.”

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” The statutory standard to modify the Order is met here.

# III. ERRORS

## Assignment of Error No. 1: The definition of “reasonable and comparatively priced voice service” in Draft Rule 1(BB) is unreasonably vague regarding which threshold would apply for determining that a service is presumptively deemed competitively priced, subject to rebuttal. In addition, the burden should be on the incumbent carrier to show through clear and convincing evidence that the presumption should not apply.

In Draft Rule 1(BB), the PUCO defined “reasonable and comparatively priced service” as a voice service that incorporates the definition set forth in R.C. 4927.10(B)(3).[[11]](#footnote-12) In addition, the Draft Rule states that a voice service is presumptively deemed competitively priced, subject to rebuttal, if the rate does not exceed either (1) the incumbent carrier’s basic service rates by more than 20 percent or (2) the Federal Communications Commission’s (“FCC”) urban rate floor as defined in 47 C.F.R. §54.318(a).[[12]](#footnote-13) This definition is unreasonable because it is vague regarding which threshold would apply for determining that a service is presumptively deemed competitively priced (subject to rebuttal).

Specifically, would voice service that is available at the FCC’s urban rate floor, but more than 20 percent above the incumbent carrier’s basic service rate, be presumptively deemed a competitively priced rate? For example, what if the rate were 40 percent above the incumbent carrier’s basic service rate? Or 60 percent? In those situations, affected customers would experience a considerable rate shock. This definition should be clarified and strengthened to protect potentially affected residential customers.

Therefore, the presumption should apply if the rate does not exceed “the lesser of”(1) theincumbent carrier’s basic service rate by more than 20 percent or (2) the FCC’s urban floor rate as defined in 47 C.F.R. §54.318(a). That change will remove any ambiguity in the draft rule and protect residential customers, including low income customers, from exorbitant rate increases for alternative voice service.

In addition, it is unclear what would be the incumbent carrier’s burden of proof for rebutting the presumption created by the Draft Rule. Because reasonable and comparatively priced voice service is essential for residential customers and the network benefits of universal service, the incumbent carrier should have a heavy burden of proof to overcome the rebuttable presumption created by the Draft Rule. The burden should be on the incumbent carrier to prove by clear and convincing evidence that the presumption should not apply.

Accordingly, Draft Rule 1(BB) should be amended thusly:

“Reasonable and comparatively priced voice service” is a voice service that incorporates the definition set forth in division (B)(3) of section 4927.10 of the Revised Code and is presumptively deemed competitively priced, subject to rebuttal by clear and convincing evidence, if the rate does not exceed the lesser of: (1) the ILEC’s BLES rate by more than twenty percent or; (2) the federal communications commission’s (FCC) urban rate floor as defined in 47 C.F.R. 54.318(a).

## Assignment of Error No. 2: The definition of “willing provider” in Draft Rule 1(QQ) is unlawful because it does not specify that the willing provider’s service be provided at the customer’s residence, as required by R.C. 4927.10(B)(1)(a).

“Willing provider” is defined in Draft Rule 1(QQ) as “any provider, identified by the commission through its investigative process, voluntarily offering a reasonable and comparatively priced voice service on the date an ILEC files a notice to withdraw or abandon BLES, to any residential customer affected by the withdrawal or abandonment of BLES.”

This definition is unlawful and unreasonable because it does not require that the willing provider’s voice service be provided at the customer’s residence. R.C. 4927.10(B)(1)(a) requires the PUCO to attempt to identify a willing provider of a reasonable and comparatively priced voice service to serve the customer, if it determines that no comparatively priced voice service will be available to the affected customer “at the customer’s residence.” Since basic service is by statutory definition provided at the customer’s residence, any alternative “reasonable and comparatively priced voice service” should also be provided at the customer’s residence. Draft Rule 1QQ should thus be amended to clarify that a willing provider must offer service at the customer’s residence.

## Assignment of Error No. 3: Draft Rule 1(QQ) is also unreasonable because it ignores situations where a willing provider is identified after the incumbent carrier provides its 120-day notice to customers and the PUCO.

As discussed aboveunder Error No. 2, a “willing provider” is defined in Draft Rule 1(QQ) as “any provider, identified by the commission through its investigation process, voluntarily offering a reasonable and comparatively priced voice service on the date an ILEC files a notice to withdraw or abandon, to any residential customer affected by the withdrawal or abandonment of BLES.”

This definition is unreasonable because it fails to recognize those circumstances where a willing provider is identified after the incumbent carrier notifies customers and the PUCO that basic service will be discontinued. In some cases, a willing provider may be identified after that date but before the 120-day notice period expires.[[13]](#footnote-14) Therefore, the draft rule should not exclude such providers from the legal definition of a “willing provider.”

Reflecting both this comment and the suggested change under Error No. 2 above, Draft Rule 1(QQ) should be amended thusly:

“Willing provider” is any provider, identified by the commission through its investigation process, voluntarily offering a reasonable and comparatively priced voice service at the customer’s residence on or within one hundred twenty days after the date an ILEC files a notice to withdraw or abandon BLES, to any residential customer affected by the withdrawal or abandonment of BLES.

## Assignment of Error No. 4: Draft Rule 21(F) is unreasonable because it does not protect consumers against the loss of voice service by allowing the sole provider of voice service in an area to withdraw or abandon service on only 30 days’ notice.

In its proposed rule 21(F), the PUCO Staff would have made voice over Internet protocol and telecommunications services of willing providers subject to all of Rule 21 regarding abandonment or withdrawal of voice service. This would include the 120-day notice provision of what is now Draft Rule 21(B). Both AT&T Ohio and the Ohio Telecom Association (“OTA”) opposed the proposed rule as being inconsistent with HB 64.[[14]](#footnote-15)

In its Order, the PUCO adopted Draft Rule 21(F), which is a new provision that was not included in the PUCO Staff’s proposed rules. Draft Rule 21(F) requires a sole provider of voice service seeking to abandon or withdraw the service to give only 30 days’ notice to the PUCO.[[15]](#footnote-16) The rule does not require that the provider notify customers. Draft Rule 21(F) is unreasonable.

First, a sole provider of voice service to residential customers should give customers and the PUCO more than 30 days’ notice that the service will be discontinued. A sole provider of voice service is the only provider of service to residential customers. Customers thus would be without voice service – including access to emergency services – if the provider withdraws service. Customers may need more than 30 days to determine whether another carrier will provide voice service to their homes. HB 64 requires telephone companies abandoning basic service to give customers and the PUCO 120 days’ notice.[[16]](#footnote-17) The PUCO should place the same requirement on sole providers of voice service to residential customers.[[17]](#footnote-18)

Second, there is no process for determining whether a carrier is the sole provider of a voice service to residential customers, which would trigger Draft Rule 21(F). A sole provider of voice service is akin to an incumbent carrier’s provision of basic service to residential customers – no other telephone company provides service to those customers. But unlike withdrawal of basic service, there is no way for the PUCO to know whether a carrier is the sole provider of voice service to residential customers. Withdrawal of basic service includes the right of residential customers to inform the PUCO that they have no alternative services available to them.[[18]](#footnote-19) Draft Rule 21(F) includes no such process for customers to inform the PUCO that they have no alternative voice services available.[[19]](#footnote-20)

Residential customers of the sole provider of voice service are in the same situation as residential customers of basic service who have no alternative services available. Both groups of customers should be protected equally. By allowing a sole provider of voice service to abandon service with less than 120 days’ notice to customers, the PUCO’s Order is unreasonable. The PUCO should amend Draft Rule 21(F) to require sole providers of voice service to give customers and the PUCO 120 days’ notice before service can be withdrawn.

## Assignment of Error No. 5: Draft Rule 21(G) is unreasonable because it does not require the entire Draft Rule 21 process if the PUCO determines that residential customers will have no access to emergency services.

Under Draft Rule 21(G), the PUCO may apply all of Draft Rule 21, on a case-by-case basis, to a provider if the PUCO determines that either of two circumstances exists.[[20]](#footnote-21) One, that a residential customer of voice service will not have access to 9-1-1 service if the provider withdraws or abandons its voice service. Or two, that the provider is the sole provider of emergency services to residential customers. Like Draft Rule 21(F), this rule also has the inherent flaw that it is unclear exactly how and when the PUCO will determine that it should apply Draft Rule 21(G) – and potentially all of Draft Rule 21 – to a provider. The PUCO should explain the process.

Once the PUCO determines that a provider meets one of the two criteria in Draft Rule 21(G), the same process for abandoning basic service should apply to the provider. As discussed above, it will take time to identify residential customers who would be without access to emergency services if the provider withdraws voice service. It will also take time to find a willing provider of access to emergency services for those customers who would be without alternatives to the provider’s voice service. The 120-day process in Draft Rule 21(B) will likely be needed for some customers. The PUCO should also require the provider to continue providing voice service to customers if a willing provider cannot be found.

Access to emergency services is vital to the health and safety of consumers. To protect consumers, the PUCO should have a clear process for identifying customers who would be without access to emergency services if their provider withdraws voice service. The PUCO should also automatically apply the process in Draft Rule 21 if the withdrawal of voice service leaves customers without access to emergency services. Draft Rule 21(G) contains none of these consumer protections, and thus is unreasonable.

## Assignment of Error No. 6: The PUCO unreasonably rejected the notices suggested by Consumer Groups to protect customers.

Under R.C. 4927.10, telephone companies that have received FCC approval to remove the intrastate access component from basic service must notify customers 120 days before discontinuing basic service. The PUCO Staff proposed that the notice to customers occur once as a bill insert and once as notice in a newspaper of general circulation in the customers’ community. Consumer Groups noted that the PUCO Staff’s proposed notice would not adequately inform customers that their basic service was to be discontinued and that they would have 30 days to petition the PUCO. Consumer Groups recommended that notices sent to customers contain clear language regarding the date basic service is to be discontinued, the manner in which customers may petition the PUCO for assistance in finding alternatives, and contact information for the PUCO.[[21]](#footnote-22) Consumer Groups also recommended that customers be notified through additional radio and television advertising.[[22]](#footnote-23)

In the Order, the PUCO rejected Consumer Groups’ recommendations. The PUCO stated that “the adopted rules properly balance the need for timely customer education of the right to file a petition with the Commission and the burden to be incurred by carriers relative to customer notification.”[[23]](#footnote-24) The PUCO is wrong.

The overriding concern when a telephone company abandons basic service is that customers are fully aware of the need to find an alternative provider and to file a petition at the PUCO if an alternative provider cannot be found. Any “burden” on telephone companies concerning customer notification is far outweighed by the need for greater consumer protection. Discontinuance of basic service would be at the telephone company’s initiative, not the customer’s. Discontinuance of basic service would further the telephone company’s business plan, and not benefit the customer. In fact, discontinuance of basic service would be to the customer’s detriment, because the customer would need to expend time and effort in finding an alternative service, if one exists. And the customer would have only 30 days to determine whether reasonable and comparatively priced alternatives are available, and petition the PUCO if they are not. Because customers are disadvantaged by their telephone company’s withdrawal of basic service, the PUCO should do all it can to ensure that customers are adequately informed that their basic service is being discontinued.

It was unreasonable for the PUCO to reject Consumer Groups’ customer notification recommendations. The PUCO should modify the Order and include Consumer Groups’ customer notification recommendations in the Draft Rules.

## Assignment of Error No. 7: Draft Rule 21(A) unlawfully omitted that the collaborative shall review the number and characteristics of basic local exchange service customers in Ohio, a requirement of section 749.10 of HB 64.

In the Order, the PUCO created a new paragraph (A) to the PUCO Staff’s proposed rule 21.[[24]](#footnote-25) The new paragraph discusses the function of the collaborative created under section 749.10 of HB 64. Draft Rule 21(A) states that the collaborative “shall evaluate what alternative reasonable and comparatively priced voice services are available to residential BLES customers and the prospect of the availability of a reasonable and comparatively priced voice service where none exist for the purpose of identifying any exchanges or residential BLES customers with the potential to not have access to a reasonable and comparatively priced voice service.”[[25]](#footnote-26) Although this rule is accurate, it is incomplete.

As part of the evaluation of the availability of reasonable and comparatively priced alternative services, Section 749.10 of HB 64 also requires the collaborative to review the number and characteristics of basic service customers in Ohio. This review is essential to determining whether an alternative service is a reasonable and comparatively priced substitute for a residential customer’s basic service.

The PUCO added Draft Rule 21(A) on its own accord. In order to make the Draft Rule completely convey the intent of HB 64, the PUCO should amend the rule to include that the collaborative must review the number and characteristics of basic service customers in Ohio.

## Assignment of Error No. 8: The Order unreasonably limits “legal counsel” as the only authorized persons for filing a petition signifying that the customer would be without alternative service if the incumbent carrier withdraws basic service.

Under R.C. 4927.10(B), when a telephone company seeks to withdraw basic service a customer who has no alternative service available can file a petition at the PUCO for assistance. In their Comments, Consumer Groups urged the PUCO to allow authorized representatives of such a customer to file the petition.[[26]](#footnote-27) Consumer Groups noted there might be situations where a customer without a reasonable or comparatively priced alternative service needs to file a petition with the PUCO, but is unable to do so personally. Some customers may be infirm or otherwise impaired, or might not understand the process. In such cases, someone – such as a relative, a friend, or a social service agency – should be allowed to file the petition on the customer’s behalf. Given that customers have only 30 days after receiving notice from their telephone company to determine whether they have a reasonable and comparatively priced service, the PUCO should reduce barriers for customers to file a petition.

OTA argued that such a practice would violate the PUCO’s rules of practice and the Ohio Supreme Court’s rules on the unauthorized practice of law.[[27]](#footnote-28) The PUCO apparently agreed with OTA. The Order states that the petition must be filed by the customer or the customer’s legal counsel.[[28]](#footnote-29) This is unreasonable.

The nature of a basic service abandonment proceeding should not invoke the PUCO’s rules of practice concerning representation of parties. Basic service abandonment proceedings are not contested cases. They are not application cases,[[29]](#footnote-30) but instead are commenced simply by the telephone company filing a notice.

A customer’s petition itself does nothing more than notify the PUCO that the customer has no available alternative service to the telephone company’s basic service. This, in turn, begins a PUCO Staff investigation of whether a reasonable and comparatively priced service is available to the customer. There is no legal proceeding connected with this investigation. Further, the petition itself is not described as a formal legal document in the PUCO’s Draft Rules. Instead, Draft Rule 21(C) states that the “petition is a written statement in any format from an affected customer claiming that the customer will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by an ILEC.” It does not need to be a sworn document or otherwise attested to.

Persons who are infirm or otherwise to unable file a petition at the PUCO signifying that they have no alternatives to their telephone company’s basic service should not have to obtain legal counsel in order to initiate their statutory right to a PUCO Staff investigation. This is an unnecessary barrier to customer participation in a process begun by and for the benefit of their telephone company – and to the detriment of those customers who must try to find alternative service. Customers would already be unduly disadvantaged if their telephone company chooses to discontinue providing basic service. The PUCO should not add to the customers’ distress. Persons who are infirm or otherwise unable to file the appropriate petition at the PUCO should be allowed to authorize someone to file it for them. So long as the representative does not hold himself or herself out as an attorney, there should be no issue regarding unauthorized practice of law.

The PUCO’s Order is unreasonable. The Order should be modified. Draft Rule 21(C) should be amended so that customers may use any authorized representative to file a petition signifying that they have no alternatives to their telephone company’s basic service.

## Assignment of Error No. 9: The PUCO unreasonably granted incumbent carriers the ability to increase basic service installation and reconnection fees charged to customers through a tariff amendment application, subject to an undefined appropriateness review.

Current rule 14(J) caps telephone companies’ basic service installation and reconnection fees at the levels in effect on September 13, 2010 – the effective date of the legislation limiting basic service price increases. AT&T Ohio and OTA argued that there is no reason for the PUCO to continue the cap.[[30]](#footnote-31) Consumer Groups, however, noted that increasing installation and reconnection fees charged to consumers is a way to circumvent the limitations on basic service price increases contained in Ohio law.[[31]](#footnote-32)

In the Order, the PUCO removed the cap on installation and reconnection charges and allowed telephone companies to increase these fees charged to consumers through a tariff application. The tariff would be subject to “an appropriateness review.”[[32]](#footnote-33) Neither the Order nor the Draft Rule explains the nature of such a review. This is unreasonable.

Many customers cannot afford to have more than basic service. That’s why the General Assembly capped increases in basic service rates. Telephone companies should not be allowed to circumvent Ohio law by increasing installation and reconnection charges for basic service. Ohioans have a right to know the nature of the appropriateness review that will be used to increase charges they pay for basic service.

The PUCO should abrogate Draft Rule 14(J) by reinstating current rule 14(J). In the alternative, the PUCO should modify its Order and provide details of the appropriateness review.

## Assignment of Error No. 10: The PUCO unreasonably determined that incumbent carriers should not be required to automatically enroll Lifeline customers.

An automatic enrollment process allows social service agencies to enroll a consumer in a Lifeline program without the consumer submitting an application or even giving affirmative consent. If the consumer is eligible for a qualifying program, the consumer is automatically eligible for Lifeline, and the social service agency can inform the consumer’s incumbent eligible telecommunications carrier (“ETC”) that the consumer should be given the Lifeline benefit. The automatic enrollment process allows social service agencies to enroll a consumer in a Lifeline program without the consumer submitting an application or even giving affirmative consent.

The General Assembly has directed the PUCO to encourage automatic enrollment of Lifeline customers in Ohio. R.C. 4927.13(C)(1) requires the PUCO to establish requirements for implementing automatic enrollment of eligible individuals for Lifeline assistance. The statute also requires the PUCO to work with the appropriate state agencies that administer federal or state low-income assistance programs to implement automatic enrollment. Under the statute, the PUCO also must work with carriers to negotiate and acquire information necessary to verify an individual’s eligibility and the data necessary to automatically enroll eligible individuals for lifeline service. And the statute requires all incumbent telephone companies to implement automatic enrollment in accordance with the PUCO rules and to the extent that appropriate state agencies are able to accommodate automatic enrollment.

The PUCO’s current rules implement R.C. 4927.13(C)(1). Rule 19(K) provides: “To the extent that appropriate state agencies are able to accommodate automatic enrollment, every ILEC ETC shall automatically enroll customers into lifeline assistance who participate in a qualifying program.”

In its Order, the PUCO determined that an incumbent ETC that is the only Lifeline service provider in an exchange should have the option of providing automatic enrollment.[[33]](#footnote-34) But the Order did not require incumbent ETCs that are the only Lifeline service provider in an exchange to automatically enroll Lifeline customers. The PUCO acted in response to objections by AT&T Ohio.[[34]](#footnote-35) But AT&T Ohio merely made bald assertions that automatic enrollment would “potentially compromise” an ETC’s ability to obtain “auditable documentation” and would require “inefficient and costly” changes to unidentified systems.[[35]](#footnote-36) The PUCO’s Order is based on vague speculation, and is thus unreasonable.

Although the FCC has stated that automatic enrollment of Lifeline customers may result in abuse and waste concerning Universal Service funds, the FCC was addressing those instances where more than one ETC is available to a customer. The FCC’s concern is that a customer may be unlawfully enrolled in Lifeline through more than one ETC. As the FCC stated in its 2012 Lifeline reform order, “We limit the ability of states and their agents to automatically enroll a consumer in Lifeline without the consumer’s express authorization *in order to protect the Fund against duplicative Lifeline support*, increase adherence to consumer certification rules, and ensure that all ETCs have an opportunity to compete for subscribers.”[[36]](#footnote-37)

But Rule 19(J) specifically applies to incumbent ETCs that are the *only* ETC in an exchange. Hence, the issue of duplicative Lifeline support, i.e., customers enrolling in Lifeline through more than one carrier, is nonexistent. The possibility that Lifeline abuse and waste can occur is greatly diminished. If the consumer is eligible for a qualifying program, the consumer is automatically eligible for Lifeline, and the agency may inform the consumer’s incumbent ETC that the consumer should be given the Lifeline benefit. Automatic enrollment should be allowed, so long as the consumer may opt out of the Lifeline program.

R.C. 4927.13(A)(1) requires each incumbent ETC to implement automatic enrollment not only in accordance with PUCO rules but also “to the extent that appropriate state agencies are able to accommodate the automatic enrollment.” If a state agency can accommodate automatic enrollment, then a Lifeline-eligible customer who participates in the agency’s program should be enrolled automatically. The PUCO should not allow the only ETC in an exchange to stand in the way of automatic enrollment of Lifeline customers where automatic enrollment is possible.

There is no good reason to exempt the only ETC in the exchange from automatically enrolling Lifeline-eligible customers. There is no cost involved in accessing databases to verify customer eligibility. All the ETC would need is a computer.

The PUCO’s Order ignores the availability of automatic enrollment from some agencies, and would make it more difficult for low-income consumers to enroll for Lifeline service. This contravenes the General Assembly’s directive in R.C. 4927.13(C)(1) that the PUCO promote automatic enrollment of Lifeline customers.

The PUCO’s Order is unreasonable and unlawful. The PUCO should modify the Order by requiring an incumbent ETC that is the only Lifeline service provider in a particular exchange to, where possible, provide automatic enrollment of Lifeline customers.

## Assignment of Error No. 11: The PUCO unreasonably rejected Consumer Groups’ recommendation that Disability Financial Assistance be included as a qualifying program for the purpose of Lifeline in Draft Rule 19(H)(l)(h).

AT&T Ohio asserted that the Ohio Disability Financial Assistance Program (“DFA”) should no longer be considered as a qualifying program for purposes of Lifeline eligibility.[[37]](#footnote-38) The PUCO agreed with AT&T Ohio’s recommendation, stating that it would be “consistent” with federal rules.[[38]](#footnote-39) However, DFA is exclusively an Ohio needs-based program. It would obviously be impossible for federal Lifeline rules to list every individual state program which might qualify for Lifeline assistance.

The criteria for eligibility for DFA include a resource limit of $1,000,[[39]](#footnote-40) which is more stringent than any other needs-based program. The program is intended as emergency support for persons with disabilities who have not yet qualified for the Federal Supplemental Security Income program.[[40]](#footnote-41) The program serves, as Consumer Groups noted, the “poorest of the poor.”[[41]](#footnote-42) DFA participants are qualifying low-income consumers under the federal Lifeline rules. Those rules provide that a “qualifying low-income consumer” is one who “meets additional eligibility criteria established by a state for its residents, provided that such-state specific criteria are based solely on income or other factors directly related to income.[[42]](#footnote-43)

Not considering receipt of these emergency benefits as criteria for Lifeline eligibility will harm the most vulnerable Ohio consumers. The PUCO’s Order is thus unreasonable and should be modified to include DFA as a qualifying program for Lifeline assistance.

## Assignment of Error No. 12: The PUCO unlawfully deleted previous Ohio Adm. Code 4901:1-6-19(J), which facilitated coordination among the PUCO, social service agencies and telephone companies in enrolling Lifeline customers.

R.C. 4927.13(C)(1)(b) requires the PUCO to “work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to negotiate and acquire information necessary to verify an individual’s eligibility and the data necessary to automatically enroll eligible individuals for lifeline service.” To implement this statute, the PUCO adopted current Rule 19(J).

In its Order, the PUCO eliminated current Rule 19(J). The PUCO stated that nothing in the FCC’s Lifeline Reform Order supports continuation of Rule 19(J).[[43]](#footnote-44) The PUCO’s basis for eliminating the rule is misplaced.

 The PUCO has a statutory duty under Ohio law to work with social service agencies and carriers to facilitate automatic enrollment.[[44]](#footnote-45) The PUCO cannot shirk this duty by relying on the absence of FCC discussion of the issue. The PUCO’s duty comes from Ohio law, and cannot be overridden by a federal policy that is silent on the issue.

The PUCO’s Order ignores the availability of automatic enrollment from some agencies, and would make it more difficult for low-income consumers to enroll for Lifeline service. This contravenes the General Assembly’s directive that the PUCO promote enrollment of Lifeline customers and work with social agencies and carriers to facilitate automatic enrollment. The PUCO should modify its Order by retaining current Rule 19(J).

## Assignment of Error No. 13: The PUCO unlawfully determined that Lifeline customers should have only 30 days to submit acceptable documentation of continued eligibility instead of the 60 days required by Ohio law.

The PUCO’s Order shortens the time frame for documenting continuing eligibility for Lifeline from the current 60 days to 30 days.[[45]](#footnote-46) The sole basis provided for the change is to be consistent with the PUCO’s prior determination in Case No. 10-2377-TP-COI. The PUCO’s action is unlawful.

R.C. 4927.13(C)(3) requires ETCs to “provide written customer notification if a customer’s lifeline service is to be terminated due to failure to submit acceptable documentation for continued eligibility for that assistance *and* *shall provide the customer an additional sixty days to submit acceptable documentation of continued eligibility or dispute the carrier’s findings regarding termination of the lifeline service*.” (Emphasis added.) The PUCO lacks the authority to amend an Ohio statute. The Order should be abrogated and Draft Rule 19(L) should be amended to provide Lifeline customers 60 days to submit documentation of continued eligibility for Lifeline.

# IV. CONCLUSION

Consumers should be protected in their dealings with telephone companies. The consumer protections in the Draft Rules should be enhanced. In order to adequately protect consumers, the PUCO should modify its Order as recommended herein by Consumer Groups.

Respectfully submitted,

*/s/ Ellis Jacobs*

Ellis Jacobs (0017435), Counsel of Record

Advocates for Basic Legal Equality, Inc.

130 West Second St., Suite 700 East

Dayton, Ohio 45402

Telephone: 937-535-4419

ejacobs@ablelaw.org

(willing to accept service by e-mail)

*Attorney for Edgemont Neighborhood Coalition*

*/s/ Noel M. Morgan*

Noel M. Morgan (0066904), Counsel of Record

Senior Attorney

Legal Aid Society of Southwest Ohio LLC

215 E. Ninth St.

Cincinnati, Ohio 45202

Telephone: 513-362-2837

nmorgan@lascinti.org

(willing to accept service by e-mail)

BRUCE WESTON (0016973)

OHIO CONSUMERS’ COUNSEL

*/s/ Terry L. Etter\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*

Terry L. Etter (0067445), Counsel of Record

Assistant Consumers’ Counsel

**Office of the Ohio Consumers’ Counsel**

10 West Broad Street, Suite 1800

Columbus, Ohio 43215-3485

Telephone: (614) 466-7964 (Etter direct)

terry.etter@occ.ohio.gov

(willing to accept email service)

*/s/ Michael R. Smalz*

Michael R. Smalz (0041897), Counsel of Record

Senior Attorney

Ohio Poverty Law Center

555 Buttles Avenue

Columbus, Ohio 43215

Telephone: 614-824-2502

msmalz@ohiopovertylaw.org

(willing to accept service by e-mail)

*/s/ Michael Walters*

Michael Walters (0068921), Counsel of Record

Legal Hotline Managing Attorney

Pro Seniors, Inc.

7162 Reading Road, Suite 1150

Cincinnati, Ohio 45237

Telephone: (513) 458-5532

mwalters@proseniors.org

(willing to accept service by e-mail)

*/s/ Peggy P. Lee*

Peggy P. Lee (0067912), Counsel of Record

Senior Staff Attorney

Southeastern Ohio Legal Services

964 East State Street

Athens, Ohio 45701

Telephone: 740-594-3558

plee@oslsa.org

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Application for Rehearing was served on the persons stated below via electronic transmission this 30th day of December 2016.

 */s/ Terry L. Etter*

Terry L. Etter

Assistant Consumers’ Counsel

**SERVICE LIST**

|  |  |
| --- | --- |
| William.wright@ohioattorrneygeneral.govPatrick.crotty@cinbell.comJk2961@att.commo2753@att.comdt1329@att.comselisar@mwncmh.commpritchard@mwncmh.comglpetrucci@vorvs.comsmhoward@vorys.commatthew.myers@upnfiber.comglenn.richards@pillsburylaw.comcblend@porterwright.comdhart@douglasehart.comdavid.vehslage@verizon.comBarthRoyer@aol.comAttorney Examiners:Jay.agranoff@puc.state.oh.usJeffrey.jones@puc.state.oh.us |  |

1. Finding and Order (November 30, 2016) (“Order”). Because the PUCO issued the rules as “draft” rules, they will be referred to herein as “Draft Rule \_\_.”) [↑](#footnote-ref-2)
2. Edgemont Neighborhood Coalition is a non-profit, charitable organization in Dayton that provides a variety of services to Edgemont residents, and works to expand education and economic opportunities and improve the quality of life for all residents of the neighborhood. [↑](#footnote-ref-3)
3. The Legal Aid Society of Southwest Ohio LLC provides legal representation, information, advice and referral for lower-income residents of Brown, Butler, Clermont, Clinton, Hamilton, Highland, and Warren Counties. [↑](#footnote-ref-4)
4. The Office of the Ohio Consumers’ Counsel is the state representative of Ohio’s residential utility customers. *See* R.C. Chapter 4911. [↑](#footnote-ref-5)
5. The Ohio Poverty Law Center is a nonprofit law office that pursues statewide policy and systemic advocacy to expand, protect, and enforce the legal rights of low-income Ohioans. [↑](#footnote-ref-6)
6. Pro Seniors, Inc. is a non-profit organization that provides free legal and long-term care advice and information to older adults, many of whom will be affected by the new rules. [↑](#footnote-ref-7)
7. Southeastern Ohio Legal Services gives legal help without attorney fees to residents of Southeast Ohio with low income and limited savings and assets. [↑](#footnote-ref-8)
8. R.C. 4905.22. [↑](#footnote-ref-9)
9. R.C. Chapter 4927; Ohio Adm. Code Chapter 4901:1-6. [↑](#footnote-ref-10)
10. *See* R.C. 119.032(C). [↑](#footnote-ref-11)
11. Order at 13. [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. The incumbent carrier must provide at least 120 days’ prior notice to the PUCO and to its affected customers of the withdrawal or abandonment of BLES. R.C. 4927.10(A)(1). A residential customer to whom the required notice has been given may then file a petition with the PUCO not later than 90 days prior to the effective date of the withdrawal or abandonment, i.e., within 30 days after receiving the 120-day notice. R.C. 4927.10(B)(1)(a). The PUCO must issue an order disposing of the customer’s petition no later than 90 days after the filing of the petition. R.C. 4927.10(B)(1). [↑](#footnote-ref-14)
14. AT&T Ohio October Comments at 24; OTA October Comments at 15-16. [↑](#footnote-ref-15)
15. Order at 59-60. [↑](#footnote-ref-16)
16. R.C. 4927.10(A)(1). [↑](#footnote-ref-17)
17. “Voice service” includes all of the basic functionalities described in 47 C.F.R. §54.101(a) but it is not the same as basic service. R.C. 4927.01(A)(18). The voice services identified in 47 C.F.R. §54.101(a) include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 9-1-1 and enhanced 9-1-1, to the extent the local government in an eligible carrier’s service area has implemented 9-1-1 or enhanced 9-1-1 systems; and toll limitation services to qualifying low-income consumers. [↑](#footnote-ref-18)
18. R.C. 4927.10(B). [↑](#footnote-ref-19)
19. The collaborative process created by HB 64 must determine whether basic service customers have no alternatives available should their telephone company withdraw basic service. HB 64 did not address situations whether the collaborative should identify sole providers of voice service. [↑](#footnote-ref-20)
20. Order, Attachment A at 39. [↑](#footnote-ref-21)
21. Consumer Groups October Comments at 5-8. [↑](#footnote-ref-22)
22. *Id.* at 9-12. [↑](#footnote-ref-23)
23. Order at 28. [↑](#footnote-ref-24)
24. Order at 44. [↑](#footnote-ref-25)
25. *Id.*, Attachment A at 36. [↑](#footnote-ref-26)
26. Consumer Groups October Comments at 17-18. [↑](#footnote-ref-27)
27. OTA November Reply Comments at 7-9. [↑](#footnote-ref-28)
28. Order at 56. The Draft Rules, however, do not provide for a customer to file a petition through legal counsel. [↑](#footnote-ref-29)
29. *See id.* at 49. [↑](#footnote-ref-30)
30. AT&T Ohio February Comments at 9-11; OTA February Comments at 5-6. [↑](#footnote-ref-31)
31. Consumer Groups March Reply Comments at 10-11. [↑](#footnote-ref-32)
32. Order at 34. [↑](#footnote-ref-33)
33. *Id.* at 39. [↑](#footnote-ref-34)
34. *Id.* [↑](#footnote-ref-35)
35. AT&T Ohio February Reply Comments at 5. [↑](#footnote-ref-36)
36. *In the Matter of Lifeline and LinkUp Reform and Modernization*, WC Docket No. 11-42, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (released February 6, 2012), ¶ 172 (emphasis added). [↑](#footnote-ref-37)
37. AT&T Ohio March Reply Comments at 4. [↑](#footnote-ref-38)
38. Order at 37. [↑](#footnote-ref-39)
39. Ohio Adm. Code 5101:1-5-30. [↑](#footnote-ref-40)
40. Ohio Adm. Code 5101:1-5-01. [↑](#footnote-ref-41)
41. Consumer Groups February Comments at 4. [↑](#footnote-ref-42)
42. 47 C.F.R. §54.409(a)(3). [↑](#footnote-ref-43)
43. Order at 38. [↑](#footnote-ref-44)
44. R.C. 4927.13(C)(1). [↑](#footnote-ref-45)
45. Order at 40. [↑](#footnote-ref-46)