**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Commission’s Review of Ohio Adm. Code Chapter 4901:1-6. | ))) | Case No. 23-817-TP-ORD |

**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF**

**OHIO TELECOM ASSOCIATION**

**BY**

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

**OHIO POVERTY LAW CENTER AND**

**Legal Aid Society of SOuthWEST Ohio, LLC**

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# INTRODUCTION

The PUCO should deny the Ohio Telecom Association’s (“OTA”) application for rehearing of the PUCO’s February 21, 2024 Finding and Order. The Order rejected OTA’s attempts to jeopardize essential basic local exchange service (i.e. unbundled voice service) relied upon by many consumers. [[1]](#footnote-1) Some consumers, including low-income and elderly households, rely on basic local exchange service (“BLES”)[[2]](#footnote-2) to connect to family, friends, doctors, and emergency services. OTA’s proposed changes would jeopardize the ability of such families to continue receiving BLES service at affordable rates.

It is the policy of the state to “[e]nsure the adequacy and reliability of basic local exchange service \*\*\* [and] voice service throughout the state.”[[3]](#footnote-3) Preserving the ability of at-risk consumers to maintain their BLES service upholds and promotes the state’s policy. The Consumer Parties support the PUCO’s action to preserve consumer protections contained in O.A.C. 4901:1-6. The Consumer Parties are the Ohio Poverty Law Center (“OPLC”), the Office of the Ohio Consumers’ Counsel (“OCC”), and Legal Aid Society of Southwest Ohio, LLC (“LASSO”).[[4]](#footnote-4)

The OTA’s proposed language would erode consumer protections contained in the PUCO’s rules in O.A.C. 4901:1-6, undermine state policy, and likely harm consumers. Accordingly, OTA’s Application for Rehearing should be denied and the PUCO should continue to preserve the consumer protections contained in these rules.

# ARGUMENT

OTA proposes revisions that would undermine consumer protections set forth in O.A.C. 4901:1-6-11 (OTA would strike the regulation of “excess construction charges”), O.A.C. 4901:1-6-14(J) (OTA would strike applying a “standard of reasonableness” to BLES late payment charges), O.A.C. 4901:1-6-14(K) (OTA would strike applying a “standard of reasonableness” to BLES installation and reconnection fees), and O.A.C. 4901:1-6-33 (OTA would remove regulation of excess construction charges).[[5]](#footnote-5) OTA mistakenly claims the PUCO has exceeded its statutory authority.[[6]](#footnote-6) Specifically, OTA asserts the PUCO does not have authority “to review and approve the rates charged for special construction, late payment charges, or installation or reconnection fees.”[[7]](#footnote-7) Further, OTA asserts that these rules are not useful or beneficial.[[8]](#footnote-8) Moreover, OTA claims that the PUCO’s preservation of consumer protections in 4901:1-6 is in conflict with state policy.[[9]](#footnote-9) OTA is wrong.

The PUCO’s BLES rules are important to protect consumers. OCC and other consumer advocates explained in Case No. 19-173-TP-ORD and re-confirmed in this action that:

(1) a significant number of Ohioans (360,709 total customers and 234,179 residential consumers) continue to rely on BLES services provided by Ohio ILECs; (2) aggregate line loss data includes both BLES and non-BLES lines and BLES line losses comprise less than half of the aggregate line losses (with residential BLES representing just 28% of reported line losses); (3) price increases are impacting residential consumers to a greater degree (in terms of prevalence and magnitude) than business customers, and (4) price decreases for BLES are virtually non-existent.[[10]](#footnote-10)

Ohioans still rely on BLES for a number of reasons (*e.g*., cost, geographical location, reliability concerns, etc.), and many consumers rely on BLES as the only feasible voice service option. At-risk Ohioans such as senior citizens, low-income citizens, and rural residents may also be more dependent on BLES for their communications needs, and as such, would be harmed by OTA’s proposals to change the BLES rules.[[11]](#footnote-11) Thus, contrary to OTA’s claims, the PUCO’s rules designed to protect the availability, adequacy, reliability, and affordability of BLES are “useful or beneficial” under O.R.C. 106.03(A)(4) and should be retained.

OTA implies that the BLES rules are not consistent with state policy.[[12]](#footnote-12) That argument should be rejected. The importance of BLES is clearly set forth in the state’s telecommunications policy. The first policy listed in R.C. 4927.02(A)(1) is to:

Ensure the adequacy and reliability of basic local exchange service consistent with sections 4927.07, 4927.10, and 4927.11 of the Revised Code, and the adequacy and reliability of voice service throughout the state.

To emphasize BLES’ importance, regulations have been developed to specifically address important consumer-impacting issues such as pricing flexibility, quality of service, and service withdrawal.

OTA claims that the PUCO has no rate review authority over late payment charges, installation fees, reconnection fees, and special construction fees.[[13]](#footnote-13) While OTA does not object to tariffing these BLES-related charges, it seeks to strike important “standard of reasonableness” language in the rules that protects consumers from unreasonable charges.[[14]](#footnote-14) OTA claims the PUCO has no authority under R.C. 4927.12 (regarding rates for BLES) or R.C. 4927.125 to impose the “standard of reasonableness” language in the rules. OTA’s proposal should be rejected. Striking that language would harm consumers because telephone companies could unreasonably increase these charges.

R.C. 4927.12 strictly limits how much an incumbent local exchange carrier can raise its rates for BLES. Plainly, capping the rates for BLES, yet allowing the utility to charge *unreasonable* amounts for construction fees, late payment charges, and installation fees would be an absurd result contrary to the purpose of R.C. 4927.12. And it would be inconsistent with the state’s policy to ensure the availability, adequacy, and reliability of BLES.[[15]](#footnote-15) It would also be prohibited by R.C. 4927.11(A) which requires ILECs to provide BLES to all persons and entities in their service areas “on a ***reasonable*** and nondiscriminatory basis.”[[16]](#footnote-16)

Moreover, R.C. 4927.125 states that “[t]he rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service shall be tariffed *in the manner prescribed by rule adopted by the public utilities commission*.” (Emphasis added.) The PUCO has adopted rules regarding the pricing parameters for BLES, including for late payment charges, and installation and reconnection fees, which include the “standard of reasonableness.”[[17]](#footnote-17)

OTA fails to explain how PUCO rules requiring charges to meet a standard of reasonableness are inconsistent with R.C. 4927.11(A), which requires that all BLES-related services be provided on a “reasonable”basis.

**A**. The PUCO’s decision does not violate R.C. 4903.09. The PUCO properly addressed OTA’s arguments.

OTA asserts that the PUCO violated O.R.C. 4903.09 by failing to respond to OTA’s arguments, failing to address R.C. 4927.125, relying upon an outdated decision, and failing to explain how that decision is consistent with R.C. 4927.123.[[18]](#footnote-18) OTA is again wrong. The PUCO fully satisfied the requirements of R.C. 4903.09 by providing the facts and opinions that set forth its reasons for denying OTA’s efforts to erode the protections in O.A.C. 4901:1-6.

OTA’s Application for Rehearing claims that the PUCO’s decision is inconsistent with R.C. 4927.123 enacted by the General Assembly’s passage of HB 402, and effective March 20, 2019. However, OTA did not anywhere in its Comments filed more than four years after the passage of HB 402 make this argument to the PUCO. R.C. 4927.123 is not even mentioned in its Comments. The PUCO could not have failed to address a comment that was never made to it.

Moreover, OTA’s claim that the passage of HB 402 widely deregulated BLES rates and thereby eliminated the need for “pricing parameters around BLES-related fees” is incorrect.[[19]](#footnote-19) The fact that the Ohio General Assembly provided under HB 402 the ability for certain ILECs to be exempted from rate regulation after meeting very specific criteria has little to do with the restrictions upon ILECs that are not exempted. For those ILECS who do not receive exemptions pursuant to the HB 402 provisions, the prior regulatory provisions and requirements for reasonableness were left untouched by the General Assembly.

OTA further claims that the PUCO failed to address O.R.C. 4927.125 which it claimed in its Comments does not authorize the PUCO to review fees for reasonableness.[[20]](#footnote-20) However, in its decision below, the PUCO did address OTA’s claims regarding “reasonableness” which were incorporated into OTA’s proposed edits to O.A.C. 4901:1-6-14(J)(OTA would strike applying a “standard of reasonableness” to BLES late payment charges) and O.A.C. 4901:1-6-14(K)(OTA would strike applying a “standard of reasonableness” to BLES installation and reconnection fees).

The PUCO explained:

With respect to the OTA’s proposed edits to 4901-6-11, 4901:1-6-14(J), 4901:1-6-14(K), and 4901:1-6-33, the Commission notes that in its October 27, 2010 Opinion and Order at 21, it was determined that R.C. 4927.12 provides the Commission with the authority to prescribe by rule the manner in which the terms and conditions for BLES and for installation and reconnection fees shall be tariffed. The Commission clearly states that ‘given the lengths that the law goes to protecting BLES rates, it would make no sense, in our view, to have no pricing parameters around BLES fees which could easily put BLES out of reach for some customers.’ See October 27, 2010 Opinion and Order at 21. The Commission believes that the rationale stated in its October 27, 2010 Opinion and Order continues to apply to today’s environment. Therefore, the OTA’s proposed edits relative to installation, reconnection, and late payment fees are denied.[[21]](#footnote-21)

With respect to excess construction charges, the PUCO stated:

…the Commission finds that similar arguments to those raised by the OTA were previously addressed by the Commission in its October 27, 2010 Opinion and Order and were rejected. See October 27, 2010 Opinion and Order at 38. The Commission believes that the rationale stated in its October 27, 2010 Opinion and Order still applied in today’s environment….the terms and conditions for special construction should

continue to be addressed within the company tariff. Therefore, the OTA’s proposed edits are not adopted and Ohio Adm.Code 4901:1-6-033(C) should remain unchanged.[[22]](#footnote-22)

The PUCO should deny OTA’s Application for Rehearing.

# CONCLUSION

BLES remains an essential service to many at-risk Ohioans. The PUCO properly rejected OTA’s attempts to weaken consumer protections for BLES subscribers. Eroding those protections would have resulted in the prospect of unreasonable charges to consumers and loss of even a basic level of telephone service. OTA has failed to demonstrate that the PUCO acted unreasonably and unlawfully. OTA’s Application for Rehearing should be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Memorandum Contra Application for Rehearing by Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, and Legal Aid Society of Southwest Ohio, LLC was served on the persons stated below via electronic transmission this 1st day of April 2024.

*/s/ Donald J. Kral*

Donald J. Kral

 Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *In the Matter of the Commission’s Review of Ohio Adm. Code Chapter 4901:1-6,* Case No. 23-817-TP-ORD, Finding and Order (Feb. 21, 2024). [↑](#footnote-ref-1)
2. *See* R.C. 4927.01(A)(1). [↑](#footnote-ref-2)
3. R.C. 4927.02(A)(1). [↑](#footnote-ref-3)
4. Office of the Ohio Consumers’ Counsel is the statutory representative of Ohio’s approximately 4.5 million residential utility consumers; Ohio Poverty Law Center works to reduce poverty and increase justice by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty; Legal Aid Society of Southwest Ohio serves residents in Southwest Ohio in resolving serious civil legal problems of low-income people, to promote economic and family stability and to reduce poverty through effective legal assistance. [↑](#footnote-ref-4)
5. Case No. 23-817-EL-UNC, Application for Rehearing (Mar. 22, 2024) at 10-12. [↑](#footnote-ref-5)
6. *Id.* [↑](#footnote-ref-6)
7. *Id.* [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. Application for Rehearing at 6. [↑](#footnote-ref-9)
10. *In the Matter of the Commission’s Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly,* Case No. 19-173-TP-ORD,Consumer Protection Comments Regarding HB402 and PUCO Staff Report by Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. (March 15, 2022) at 7 (“Consumer Groups’ Comments.”). [↑](#footnote-ref-10)
11. Consumer Groups’ Comments at 15-19. [↑](#footnote-ref-11)
12. Application for Rehearing at 6. [↑](#footnote-ref-12)
13. *See* Application for Rehearing at 3. [↑](#footnote-ref-13)
14. *See* Application for Rehearing at 10, 11 (striking references to a “standard of reasonableness”). [↑](#footnote-ref-14)
15. *See* R.C. 4927.02(A)(1) and 4927.08(A). [↑](#footnote-ref-15)
16. Emphasis added. [↑](#footnote-ref-16)
17. O.A.C. 4927.125. [↑](#footnote-ref-17)
18. Application for Rehearing at 3. [↑](#footnote-ref-18)
19. Application for Rehearing at 9. [↑](#footnote-ref-19)
20. OTA Comments at 3; Application for Rehearing at 7. [↑](#footnote-ref-20)
21. Finding and Order (Feb. 21, 2024) at ⁋ 22. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)