**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 |

**REPLY COMMENTS**

**BY**

**THE LEGAL AID SOCIETY OF CLEVELAND,**

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

**OHIO POVERTY LAW CENTER,**

**PRO SENIORS, INC., AND**

**SOUTHEASTERN OHIO LEGAL SERVICES**

**I. INTRODUCTION**

In this case, the Public Utilities Commission of Ohio (“PUCO”) is seeking comment on rules that help promote consumers’ access to basic telephone service and 9-1-1 service. These services are necessities for consumers. The PUCO seeks comment on specific proposed changes to three rules: Ohio Adm. Code 4901:1-6-02, 4901:1-6-07, and 4901:1-6-21.

The Legal Aid Society of Cleveland, the Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (collectively, “Consumer Groups”) recommend that notices regarding discontinuance of basic service or voice service be mailed/emailed separately from customers’ telephone bills, with the notice prominently identified as a service discontinuance notice.[[1]](#footnote-2) Consumer Groups also recommend that when voice service customers’ sole access to 9-1-1 is being discontinued, the PUCO should provide those customers with the same assistance that basic service customers receive under R.C. 4927.10(B)(1)(a).[[2]](#footnote-3)

The Ohio Cable Telecommunications Association (“OCTA”), the Ohio Telecom Association (“OTA”), and AT&T Ohio each filed comments on July 17, 2019. In these Reply Comments, Consumer Groups address the other parties’ comments.[[3]](#footnote-4)

**II. RECOMMENDATIONS**

**A. The PUCO may apply the disconnection notice requirement to any voice service that is not a voice over Internet protocol (“VOIP”) service or that uses technology that was commercially available before September 13, 2010.**

Proposed Ohio Adm. Code 4901:1-6-07(J) would require 30 days’ notice to customers if their voice service is to be discontinued. The other parties assert that this requirement is not allowed under R.C. 4927.03(A).[[4]](#footnote-5) Their interpretation of the statute is overly broad.

R.C. 4927.03(A) provides that the PUCO “has no authority over any interconnected voice over internet protocol-enabled service or any telecommunications service that is not commercially available on September 13, 2010, and that employs

technology that became available for commercial use only after September 13, 2010….”[[5]](#footnote-6) While the statute is explicit regarding VOIP service, the PUCO has authority to regulate some voice services in Ohio.

The difference between VOIP and voice service under Ohio law is that VOIP is technology-oriented while voice service is service-oriented. Ohio law specifies that VOIP uses “internet protocol or a successor protocol” to transmit phone calls.[[6]](#footnote-7) There is no requirement that a VOIP provider offer any service other than the transmission of phone calls.

But Ohio law specifies that voice service “includes all of the applicable functionalities described in 47 C.F.R. §54.101(a).”[[7]](#footnote-8) The following functionalities are listed in 47 C.F.R. §54.101(a)(1): 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. Thus, a voice service provider must offer specific services in Ohio.

Further, while VOIP appears to be specifically outside the PUCO’s authority (except for the protection, welfare, and safety of the public), the same is not true for voice service. The PUCO has no authority regarding voice service “that was not commercially available on September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010….”[[8]](#footnote-9) This means that the PUCO *has* authority over any voice service that *was commercially available* as of September 13, 2010 *or* employs technology that *was available for commercial use* as of September 13, 2010.[[9]](#footnote-10) The PUCO should apply proposed Ohio Adm. Code 4901:1-6-07(J) to such voice services.[[10]](#footnote-11)

**B. The PUCO should require that a 30-day notice regarding discontinuance of a voice service be sent to customers because customers will need time to find another provider.**

AT&T Ohio states that the PUCO should require telephone companies to only notify the PUCO 30 days before a voice service is discontinued.[[11]](#footnote-12) AT&T Ohio says that, other than email, the proposed rule requires means of sending the notice to customers (i.e., facsimile, overnight mail, or hand delivery) that typically apply in a business-to-business setting.[[12]](#footnote-13) AT&T Ohio claims that notices to residential customers are usually provided through bill inserts and that it is unreasonable to prevent providers from using bill inserts.[[13]](#footnote-14) AT&T Ohio is wrong.

Customers need adequate notice when a provider has decided to discontinue their voice service. It may take 30 days or more for customers to identify a provider that serves their residence (if one exists) and to arrange to port their telephone number to the new provider. The General Assembly recognized this when it required 120 days’ notice when a telephone company withdraws basic service.[[14]](#footnote-15) Requiring telephone companies to provide a 30-day notice only to the PUCO would not help customers find a new provider. The PUCO should adopt proposed Ohio. Adm. Code 4901:1-6-07(J), with the Consumer Groups’ recommendation that the notice to be sent to customers separate from their telephone bills.

**III. CONCLUSION**

The PUCO’s rules should protect consumers when their telephone service is being withdrawn or discontinued. The recommendations of OCTA, OTA, and AT&T Ohio would diminish consumer protections. The PUCO should reject them. Instead, the PUCO should adopt the Consumer Groups’ recommendations, which will help enhance the consumer protections in the proposed rules.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Reply Comments was served on the persons stated below via electronic transmission this 26th day of July 2019.

 */s/ Terry L. Etter*

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**SERVICE LIST**

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1. *See* Consumer Groups’ Comments (July 17, 2019) at 2-3. [↑](#footnote-ref-2)
2. *See id.* at 3-4. [↑](#footnote-ref-3)
3. If Consumer Groups do not address a particular argument raised in the other parties’ comments, that should not be construed as Consumer Groups’ acquiescence to the argument. [↑](#footnote-ref-4)
4. *See* OCTA Comments at 4; AT&T Ohio Comments at 2; OTA Comments at 4 (arguing that proposed Ohio Adm. Code 4901:1-6-07(J) be deleted). [↑](#footnote-ref-5)
5. R.C. 4927.01(A)(13) defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” R.C. 4927.01(A)(13) defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” Voice service meets this definition of a telecommunications service. [↑](#footnote-ref-6)
6. R.C. 4927.01(A)(17). [↑](#footnote-ref-7)
7. R.C. 4927.01(A)(18). [↑](#footnote-ref-8)
8. R.C. 4927.03(A). [↑](#footnote-ref-9)
9. Use of the word “and” in the statute should be interpreted to mean that both conditions (the service was not commercially available of September 13, 2010 or that uses technology that was not commercially available as of September 13, 2010) must be present for the PUCO to have no authority over a voice service. If either condition is not present, the PUCO should have authority over the service. [↑](#footnote-ref-10)
10. It is not clear how many such services are in Ohio, but the most recent Federal Communications Commission data show that there are 22.5 million residential traditional switched access lines in the United States compared to 40 million residential VOIP subscriptions. *Communications Marketplace Report*, FCC GN Docket No. 18-231, Report (adopted December 12, 2018), ¶205. If Ohio data are typical, this means that more than a third of Ohio’s residential customers could have a landline-based voice service that was commercially available of September 13, 2010 or that uses technology that was commercially available as of September 13, 2010. [↑](#footnote-ref-11)
11. AT&T Ohio Comments at 2. [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. *Id.* [↑](#footnote-ref-14)
14. R.C. 4927.10(A)(1). [↑](#footnote-ref-15)