**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 |

**THIRD APPLICATION FOR REHEARING**

**BY**

**APPALACHIAN PEACE AND JUSTICE NETWORK,**

**COMMUNITIES UNITED FOR ACTION,**

**EDGEMONT NEIGHBORHOOD COALITION,**

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

**AND**

**PRO SENIORS, INC.**

In this case, the Public Utilities Commission of Ohio (“PUCO”) adopted rules that, among other things, established the process for a telephone company to withdraw customers’ basic service. But consumers generally have little experience with the PUCO’s processes. Hence, the PUCO should adopt processes that are consumer-friendly and that protect consumers. Appalachian Peace and Justice Network, Communities United for Action, Edgemont Neighborhood Coalition, the Office of the Ohio Consumers’ Counsel, and Pro Seniors, Inc. (collectively, “Consumer Groups”) acknowledge the PUCO’s efforts in this regard.

Nevertheless, the process for telephone companies to withdraw basic service adopted in this proceeding could harm consumers. Specifically, the process could begin before the effective date of the Federal Communications Commission (“FCC”) order giving a telephone company the necessary authority to withdraw basic service under Ohio law. To that end, Consumer Groups seek rehearing of the PUCO’s Fourth Entry on Rehearing (“Entry”), issued on August 9, 2017, on the following issue:

* The Fourth Entry on Rehearing is unreasonable because it could allow the process for a telephone company to withdraw consumers’ basic service under R.C. 4927.10(A) to begin before the effective date of the FCC order providing the necessary authorization to withdraw basic service under the statute.

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

Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

# 

# I. INTRODUCTION

The PUCO’s Fourth Entry on Rehearing may allow the process for a telephone company to withdraw customers’ basic service to begin before it should. The Entry assumes that all FCC orders are effective when issued.[[1]](#footnote-2) This is not the case. The process for withdrawing customers’ basic service should not begin until the requisite FCC order becomes effective. Consumer Parties seek rehearing of the Entry on this issue.

When a telephone company is withdrawing customers’ basic service, an area of special concern is the effect of the process on the rights of consumers. Ohio law requires a telephone company to give customers and the PUCO 120 days’ notice before withdrawing basic service.[[2]](#footnote-3) But the statutory process gives consumers only 30 days to determine whether they have a reasonably and comparatively priced alternative to the telephone company’s basic service.[[3]](#footnote-4) To protect consumers, it is important that the process for withdrawing customers’ basic service does not begin prematurely.

# 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.” Consumer Groups participated in this proceeding by filing comments, reply comments, and other pleadings.

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 Entry is met here.

**III. ASSIGNMENT OF ERROR**

## The Fourth Entry on Rehearing is unreasonable because it could allow the process for a telephone company to withdraw consumers’ basic service under R.C. 4927.10(A) to begin before the effective date of the FCC order providing the necessary authorization to withdraw basic service under the statute.

Under R.C. 4927.10(A), the 120-day process for withdrawing basic service can begin only after the FCC adopts an order allowing a telephone company to remove the interstate access component of its basic service. In order to begin the process, the PUCO’s Draft Rules require the telephone company to file a copy of the requisite FCC order in a PUCO docket.[[4]](#footnote-5)

In order to protect consumers against unlawful loss of their basic service, Consumer Groups recommended that the rule specify that a *final* FCC order must be filed with the PUCO before the 120-day process could begin.[[5]](#footnote-6) A final order would be either an order on reconsideration or an order where reconsideration was not sought.[[6]](#footnote-7)

The PUCO denied rehearing on this point. The PUCO stated, “unless stayed, an order issued by the FCC is lawful and effective even if a party later files a petition for reconsideration.”[[7]](#footnote-8) This is not the case, however.

Different types of proceedings at the FCC have different effective dates. A non-rulemaking proceeding that requires a decision by the full FCC is generally effective on “the date of public notice of such action….”[[8]](#footnote-9) However, the FCC may “on its own motion or on motion by any party, designate an effective date that is either earlier or later in time than the date of public notice of such action.”[[9]](#footnote-10) Thus, an FCC order might not be effective on the date it is issued.

This is also true of decisions made under delegated authority, i.e., where the decision is not voted on by all the commissioners. If a recommended decision is reviewed by one or more FCC commissioners, the effective of the decision is delayed by 40 days.[[10]](#footnote-11) In other delegated authority cases, the decision maker – such as a bureau chief – could set an effective date different from the release of the full decision or public notice of the decision.[[11]](#footnote-12)

Nothing in the record of this proceeding indicates what kind of FCC proceeding would be conducted in order to allow a telephone company to withdraw the interstate access portion of its basic service. Thus, the record does not indicate which of the FCC rules concerning effective dates of orders would apply to an FCC order providing a telephone company with the requisite authority to begin withdrawing customers’ basic service in Ohio.

The record does not support the notion that the FCC order would be effective upon issuance. Hence, it was unreasonable for the PUCO to allow the process for withdrawing customers’ basic service to begin upon issuance of an FCC order.

Allowing a telephone company to withdraw basic service prematurely could cause irreversible harm to consumers. Once the process for withdrawing basic service begins,

customers may have to change phone providers.[[12]](#footnote-13) It may not be possible to undo changes to their phone providers, due to contractual arrangements and other circumstances. And consumers might have to pay as much as 20 percent more for telephone service from an alternative provider.[[13]](#footnote-14)

The PUCO, therefore, should not allow the process for withdrawing customers’ basic service to begin prematurely. The PUCO refused to require that a telephone company seeking to withdraw customers’ basic service file a final FCC order giving it the requisite authority under Ohio law.[[14]](#footnote-15) It may still protect consumers by clarifying that the process for withdrawing customers’ basic service will not begin until the effective date of the FCC order allowing a telephone company to remove the interstate access component of its basic service. The PUCO should issue this clarification.

**IV. CONCLUSION**

When consumers are about to lose their basic service through no fault of their own, the PUCO’s process should focus on protecting them. That includes making sure that the process for withdrawing basic service does not start prematurely. The Fourth Entry on Rehearing does not offer this consumer protection. The PUCO should grant Consumer Groups rehearing and modify its Entry so the process does not begin until the requisite FCC order becomes effective.

Respectfully submitted,

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**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 8th day of September 2017.

*/s/ Terry L. Etter*

Terry L. Etter

Assistant Consumers’ Counsel

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1. Entry, ¶36. [↑](#footnote-ref-2)
2. R.C. 4927.10(A)(1). [↑](#footnote-ref-3)
3. *See* R.C. 4927.10(B). [↑](#footnote-ref-4)
4. Draft Rule 21(B)(1). [↑](#footnote-ref-5)
5. Second Application for Rehearing (May 5, 2017) at 5-7. [↑](#footnote-ref-6)
6. *Id.* at 7. [↑](#footnote-ref-7)
7. Fourth Entry on Rehearing, ¶ 36. [↑](#footnote-ref-8)
8. 47 C.F.R. §1.103. [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. 47 C.F.R. §1.102(a)(1). [↑](#footnote-ref-11)
11. 47 C.F.R. §1.102(b)(1). [↑](#footnote-ref-12)
12. The consumer would change carriers unless a reasonable or comparatively priced alternative to the telephone company’s basic service is not available at the consumer’s home. In that case, the telephone company would be required to provide to the consumer a reasonable and comparatively priced alternative to its basic service. Draft Rule 21(E). [↑](#footnote-ref-13)
13. *See* Draft Rule 1(BB). [↑](#footnote-ref-14)
14. Fourth Entry on Rehearing, ¶ 36. [↑](#footnote-ref-15)