

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of the)	
Minimum Telephone Service Standards)	Case No. 00-1265-TP-ORD
As Set Forth in Chapter 4901:1-5 of the)	Case No. 05-1102-TP-ORD
Ohio Administrative Code.)	

**REPLY COMMENTS
OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEOPLES ACTION COALITION,
THE CITY OF CLEVELAND,
EDGEMONT NEIGHBORHOOD COALITION,
THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CONSUMERS
FOR FAIR UTILITY RATES, CLEVELAND HOUSING NETWORK AND THE
NEIGHBORHOOD ENVIRONMENTAL COALITION**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers,¹ the Appalachian Peoples Action Coalition, the City of Cleveland, Edgemont Neighborhood Coalition, The Empowerment Center of Greater Cleveland, Consumers for Fair Utility Rates, Cleveland Housing Network and the Neighborhood Environmental Coalition (collectively, "Consumer Groups") submit reply comments in these proceedings.² The telephone companies urge the Public Utilities Commission of Ohio ("PUCO" or "Commission") to adopt the PUCO staff's proposal to eliminate the

¹ OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

² The Consumer Groups reply to comments filed by AT&T Ohio, CenturyTel of Ohio, Inc. ("CenturyTel"), Cincinnati Bell Telephone Company LLC ("CBT"), Ohio Cable Telecommunications Association ("OCTA"), Ohio Telecom Association ("OTA"), United Telephone Company of Ohio dba Embarq ("Embarq"), Verizon North Inc. ("Verizon") and Windstream Ohio, Inc. and Windstream Western Reserve, Inc. ("Windstream"). If the Consumer Groups do not address an argument presented in other parties' comments, that should not be construed as the Consumer Groups acquiescing to the argument.

option for customers of telephone service bundles to retain at least basic local exchange service (“basic service” or “BLES”) by paying at least the company’s tariffed basic service rate. The PUCO staff’s proposal would eliminate twenty years of consumer protections against disconnection of basic service, as found in Ohio Adm. Code 4901:1-5-10(B) (“Rule 10(B)”) and its predecessor provisions.³

The telephone companies’ primary argument is that because some telephone providers are not subject to Rule 10(B), no telephone provider should be subject to the rule. As discussed herein, there is no support for this position in state law or policy. The telephone companies also argue that Rule 10(B) was unreasonable in light of the small number of customers affected.⁴

The Commission should reject the PUCO staff proposal, and should also reject CBT’s recommendations to expand the proposal to those situations where customers purchase features on an a la carte basis or where the price for each component of a bundle is listed on the customer’s bill. The Commission should instead make the changes to Rule 10(B) discussed in the Consumer Groups’ comments.

II. THE ALLEGED “BALANCING” OF STATE POLICY INTERESTS RECOMMENDED BY THE TELEPHONE COMPANIES IS TILTED IN FAVOR OF THEIR PROFITS, TO THE DETRIMENT OF CONSUMERS.

To support their arguments in favor of the PUCO staff proposal, the telephone companies cite two expressions of state policy:⁵ R.C. 4927.02(A)(6) and (7), which make it state policy to **consider** the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to

³ The PUCO staff’s proposal was set forth in an Entry dated July 31, 2008 (“July 31 Entry”).

⁴ See, e.g., CenturyTel Comments at 2; Windstream Comments at 2.

⁵ See, e.g., AT&T Ohio Comments at 2; OTA Comments at 2.

PUCO jurisdiction and to not **unduly** favor or advantage any provider and not **unduly** disadvantage providers of competing and functionally equivalent services; and Executive Order 2008-04S, which among other things requires government agencies to **amend** or rescind rules that are “unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, that unnecessarily impede economic growth, or that have had unintended negative consequences.”⁶

The telephone companies, however, did not mention other portions of state law and policy that are relevant to the Commission’s consideration of Rule 10(B). First, there is the policy in R.C. 4927.02(A)(1) to “[e]nsure the availability of adequate basic local exchange service to citizens throughout the state....” By taking away from customers the option to maintain basic service through partial payments, the PUCO staff proposal contravenes this state policy.

Second, although AT&T Ohio points to the policy in R.C. 4927.02(A)(2) to “[r]ely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market,”⁷ AT&T Ohio ignores the rest of that policy: i.e., “to maintain **just and reasonable** rates, rentals, tolls, and charges for public telecommunications service” (emphasis added).⁸ It is neither just nor reasonable to disconnect a customer’s local service if the customer has paid at least the equivalent of the carrier’s tariffed basic service rate.

Third, there is the policy in R.C. 4927.02(A)(4) to “[p]romote diversity and options in the supply of public telecommunications services and equipment throughout

⁶ Executive Order 2008-04S at 5.

⁷ AT&T Ohio Comments at 2.

⁸ See also R.C. 4905.22.

the state....” In eliminating customers’ ability to remain connected to the network by at least paying the carrier’s tariffed rate for basic service, the PUCO staff proposal would reduce the options for telecommunications services available to consumers.

Fourth, a guiding principle of Executive Order 2008-04S is that “State Regulations for Entities Doing Business in Ohio Must Meet the Needs of **All** Interested Stakeholders.”⁹ In that regard, the Executive Order states:

Ohio’s citizens, their government and those doing business in the State have a mutual stake in Ohio’s business regulations and regulatory processes. Consequently, all of these parties must act as partners in the administration of State business regulations.¹⁰

The PUCO staff proposal does not meet the needs of consumers, and thus dissolves the partnership required by Executive Order 2008-04S.

OTA claims that the PUCO staff proposal serves the public interest in three ways. OTA first contends that the proposal “adheres to and implements the policy of this State as set forth in Revised Code §4927.02.”¹¹ As discussed above, the PUCO staff proposal is one-sided in favor of the telephone companies and does not meet the needs of consumers. OTA is wrong.

OTA’s second assertion is that the proposal serves the public interest “by reducing costs of service that necessarily redound to some body of ratepayers. ... By eliminating unnecessary and unreasonable costs associated with the rule as originally adopted, the Revised Termination Rule inures to everyone’s benefit.”¹² This might be true if the rates for bundled services were based on the company’s cost of providing the

⁹ Executive Order 2008-04S at 1 (emphasis added).

¹⁰ Id.

¹¹ OTA Comments at 3.

¹² Id.

service. A reduction in cost should transfer into a reduction of the rate paid by consumers. Rates for bundled services, however, are not cost-based. Indeed, many rates are based on what the “market” will bear¹³ or on what competitors charge for similar services. Thus, a reduction in the cost to a company for providing service likely would not be passed on to consumers. Only the company – through an improved bottom line and possibly increased dividends to shareholders – would benefit from the PUCO staff proposal. Consumers would see no financial benefit from the PUCO staff proposal, and would be harmed by being subjected to an increased likelihood for disconnection.

OTA’s third claim is that “the Revised Termination Rule fairly assigns costs among customers,” allegedly by allowing companies to avoid “saddling” all customers with costs attributed to “a very few customers....”¹⁴ OTA is wrong in this assertion, as well. Eliminating Rule 10(B) as proposed by the PUCO staff would do nothing to assign costs among customers. Instead, the proposal would allow telephone companies to avoid the costs associated with implementing a rule that the PUCO lawfully promulgated. Again, the companies would improve their bottom line, at the expense of consumer protections that allow customers to retain at least basic service.

It should also be noted that many of the incumbent local exchange carriers (“ILECs”) could easily absorb the costs of making any changes necessary for complying with Rule 10(B). OCC has computed the return on equity for Ohio’s large ILECs, based on financial information from the companies’ 2007 annual report filed with the PUCO. OCC’s computations are shown in the following table:

¹³ Ohio Adm. Code 4901:1-6-05(B)(1).

¹⁴ OTA Comments at 3.

2007 Return on Equity for Large ILECS

Company	Earned Return
Cincinnati Bell Telephone	89.62%
Embarq	56.10%
Windstream Western Reserve	56.10%
CenturyTel	47.34%
Windstream Ohio	40.62%
Verizon North*	27.68%
Chillicothe Telephone Company	12.76%
AT&T Ohio	11.07%
* – Verizon North Common Equity not available as of Oct. 12, 2007. Calculations assumed beginning and ending common equity balance same as 2005 ending common equity balance (22.32%)	

As OCC's calculations show, six of the state's large ILECs had at least a 27% return on equity last year, with CBT earning an astounding 89.62%. These companies seem to be weathering "competition" very well.

The inequity of the PUCO staff proposal is best summed up by OCTA's statement in support of the proposal. OCTA asserted:

[C]ustomers who choose bundled services, whether they are unlimited local and long distance or integrated with other services, typically receive a discounted price by purchasing the entire bundle of services when compared to purchasing the same services on a stand-alone basis. **These customers should have no expectation of protection from disconnection for basic local services for non-payment.** If they choose a bundle and gain the benefit of discounted prices, they should recognize that if they do not pay the entire bundled service price, they will be disconnected.¹⁵

This treatment of customers is the type of "competitive parity"¹⁶ that the incumbent telephone companies would like to attain. As Verizon stated:

Some companies may not want to lose customers, no matter how poor their payment history, and will develop payment plans for them. Other companies may find it best to withhold products and services from delinquent customers. However, a company must be free to decide. ...

¹⁵ OCTA Comments at 2 (emphasis added).

¹⁶ See Embarq Comments at 2; CBT Comments at 2.

Companies should not be **required** to apply service disconnection requirements over and above what their competitors are required to do.¹⁷

In other words, consumers would be able to retain basic service only at the company's discretion. This is not in the public interest.

Under the views expressed by OCTA and Verizon, consumers who have difficulty paying for a bundle that includes services (regulated or unregulated) other than basic service would lose their basic service if they could not meet the company's demands for payment, no matter how unreasonable those demands might be. Thus, the PUCO staff's proposal would start a race to the bottom for consumer protection.

Nevertheless, OCTA is wrong. Consumers expect and deserve protection from the loss of regulated local telephone service for nonpayment of a cable, broadband, long distance or other unregulated service. The ILECs have been successful over the years in obtaining extraordinary pricing flexibility and freedom for service bundles, but the PUCO has recognized that this broad discretion must be anchored in certain minimum requirements that maintain basic protections for Ohio consumers. The rule against disconnection of local service is an example of such a consumer protection that must be part of the foundation for the broad deregulation or alternative regulation that the incumbent telephone companies enjoy.

Moreover, consumers should not be penalized as a result of being enticed to change their local service provider by a company's sales promotion. After all, the company benefits when consumers spend their money for its services. The quid pro quo

¹⁷ Verizon Comments at 2-3 (emphasis in original).

asserted by the telephone companies is irrelevant to the question of whether Ohioans and their families should have the ability to maintain basic local service in their homes.

The PUCO staff proposal does not “balance the competing state policies found in Section 4927.02, Revised Code.”¹⁸ Instead, the proposal would allow telephone companies to force customers to pay for unregulated services in order to retain their local phone service. This overwhelmingly one-sided rule removes consumer protections that the Commission has championed for at least 20 years. The Commission should reject the PUCO staff proposal.

III. CINCINNATI BELL’S PROPOSED RULE CHANGES ARE ANTI-CONSUMER AND ARE ILLOGICAL.

CBT asserts that the Commission should apply the PUCO staff proposal to those situations where “the rates charged for a combination of services are dependent upon subscribing to all of the components, but the prices are separately stated on the bill.”¹⁹ Thus, a customer could lose all local service for nonpayment of the cable television or broadband or long distance service portion of a bill, even though the customer may have paid at least the ILEC’s tariffed basic service rate. CBT states that “[t]his should not be treated any differently from a package where the price is stated as a single amount because the rates charged were only available to the customer if they subscribed to both services.”²⁰

The Commission should reject this interpretation. Under Ohio Adm. Code 4901:1-5-10(F)(3), telephone companies cannot disconnect service without first sending a

¹⁸ July 31 Entry at 5.

¹⁹ CBT Comments at 2.

²⁰ Id.

written disconnection notice that states “[t]he total dollar amount due to avoid disconnection which shall not exceed the past due amount for the service(s) subject to disconnection.” If a telephone company sends a disconnection notice that itemizes the amounts for each service, then a customer’s basic telephone service should not be disconnected if the customer pays the basic service amount listed on the disconnection notice.

CBT also goes so far as to suggest extending the rule to customers who purchase a la carte features “in combination with other services that include BLES, or who use services on a per usage basis (e.g., directory assistance) in combination with other services that include BLES.”²¹ Apparently, CBT would disconnect a customer’s entire local service even though the customer paid the basic service portion of the bill, which is also CBT’s tariffed rate for basic service. This is affirmed by CBT’s recommendation that the Commission adopt the following rule language:

Where two or more services are offered together on a bill, a failure to timely pay the entire bill may render as past due the charges for all of the services included in the bill and, as such may result in disconnection of all services included in the bill.²²

According to CBT:

There is no logical reason to treat [a la carte] customers differently than customers who subscribe to a group of services at a single flat rate price. The additional features or per use services are only available because the customer also had BLES service, so the entire array of services should be considered a “package.”²³

CBT’s suggestion is ludicrous. There is a very logical reason for treating a la carte customers differently from customers who buy service bundles: the services that an

²¹ Id.

²² Id. at 3.

²³ Id. at 2-3.

a la carte customer is purchasing are separately tariffed and separately priced. Customers receive no special “discounts” and are free to add or drop a la carte services whenever they please. To disconnect such customers’ basic service for nonpayment of a la carte features is unjust and unreasonable. The Commission should reject CBT’s blatant anti-consumer recommendation.

IV. CONCLUSION

As discussed above, the telephone companies’ comments show that the PUCO staff proposal does not result in an appropriate balancing of the competing state policies of R.C. 4927.02. In addition, the PUCO staff’s proposal does nothing to protect Ohio consumers who subscribe to service bundles. The Commission should reject the PUCO staff’s proposal. The Commission should also retain Rule 10(B), either as adopted in the 2007 Rehearing Entry or as recommended by the Consumer Groups in their comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served electronically and by First Class United States mail, postage prepaid, to the persons listed below on this 5th day of September 2008 pursuant to the July 31, 2008 Entry in this proceeding.

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