

September 10, 2008

By: E-filing Only

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18 and Rules 4901:1-13-11, 4901:1-15-17, 4901:1-21,14, and 4901:1-29-12 of the Ohio Administrative Code – PUCO Case No. 08-723-AU-ORD*

Dear Ms. Jenkins:

Filed electronically herewith in the referenced docket are the Comments of the Ohio Telecom Association. In accordance with ¶13 of the Commission's June 25, 2008 Entry herein, we will not serve these Comments, but will provide them upon request.

Should you have any questions, please feel free to contact me.

Very truly yours,

/s/ Thomas E. Lodge

Thomas E. Lodge

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of)
Chapters 4901:1-17 and 4901:1-18 and Rules) Case No. 08-723-AU-ORD
4901:1-13-11, 4901:1-15-17, 4901:1-21-14,)
and 4901:1-29-12 of the Ohio Administrative)
Code)

COMMENTS OF THE OHIO TELECOM ASSOCIATION

The OHIO TELECOM ASSOCIATION, for and on behalf of its members ("OTA"), hereby submits its Comments in response to the Commission's June 25, 2008 Entry in this matter. The OTA comments are directed to Rule 4901:1-5-07, which would amend Minimum Telephone Service Standards applicable to telecommunications providers, and to Rule 4901:1-17, as it may pertain to the telecom industry. Additionally, the OTA responds to pertinent questions posed in Appendix A of the Entry.

Rule 4901:1-5-07 – Customer Bills

Proposed Rule 4901:1-5-07(E) departs from acceptable administrative discretion in several ways. First, it singles out legitimate business – so-called "payday lenders" – for unnecessary and discriminatory treatment; second, it creates a rule impossible for providers to manage, and as a result serves to injure the very class of customers it apparently seeks to assist; finally, it violates both state policy and Executive Orders.

At page 5, the Entry states:

It has come to Staff's attention that some utilities have contracted with check-cashing businesses (also known as payday lenders) to act as authorized agents for the receipt of utility payments. Staff believes that this practice unnecessarily exposes Ohio's financially vulnerable low-income population to the predatory lending practices of this industry.

As a result, proposed Rule 4901:1-5-07(E) would prohibit establishment of such arrangements with businesses that are subject to Revised Code §§1315.21 and 1321.01-1321.19.

Such social engineering would be a mistake. Staff's perception of a social ill – and Staff provides no support for its belief in that regard – should have no bearing on legitimate lawful commerce, and certainly not when establishing rules. While most OTA members do not contract directly with check-cashing businesses or their licensees, such businesses may in fact serve as authorized utility bill payment agents via third party contracts, and thereby serve a vital function for both the providers and their customers. What purpose is served in banning such contractual arrangements between two legitimate businesses?

Neither check-cashing businesses nor “payday lenders” are unlawful in Ohio – in enacting Substitute House Bill 545, the General Assembly merely capped the interest rates they are allowed to charge. These check cashing businesses are popular with customers for making utility bill payments as they provide convenient locations and hours of operation, typically have secure teller windows, and provide a variety of other financial services (which may or may not include making payday loans). Where they do serve as authorized third party agents for the payment of telecommunications bills, Ohio Admin. Code §4901:1-05-07(C) restricts the amount which they may assess for processing payments to \$2.00 per transaction. Thus, the Commission already has adopted adequate consumer protections in this area, which ensure that customers are not subject to excessive payment processing fees. As such, the proposed addition of §4901:1-05-07(E) is unnecessary.

Moreover, the rule would be difficult to manage or enforce. Telecommunications providers generally contract with a vendor (such as Western Union) to provide third party, walk-in authorized payment locations. Ordinarily, providers have neither knowledge nor control over

other activities that may take place at the location. As a result, if the rule is adopted, telecommunications providers would have no way to manage compliance with the rule other than to eliminate use of such contracts altogether. Such cannot be in the public interest, as it would significantly reduce or eliminate the availability of authorized payment agent locations in Ohio. As a result, the Staff proposed rule would operate to eliminate payment options for customers, harming rather than helping the very population it seeks to protect.

Finally, OTA objects to yet another regulation that does not apply equally to all competitors who provide telecommunications services. Staff Proposed Rule 4901:1-5-07(E) applies only to “telecommunications providers,” not to carriers excepted from that definition or to carriers outside of Commission jurisdiction.¹ Such disparate impact violates both state policy under Revised Code §4927.02 and Governor Strickland’s Executive Order requiring that the Commission “[A]mend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, that unnecessarily impede economic growth, or that have had unintended negative consequences.” Regulated telecommunications providers should no longer be subject to any greater regulation than their non-regulated competitors.

Rule 4901:1-17

Telecommunications providers are already subject to Ohio Admin. Code Chapter 4901:1-5, the Minimum Telephone Service Standards. The MTSS are tailored specifically for telephone companies, and in fact offer greater protections for customers of telecommunications providers than does proposed Chapter 4901:1-17. To avoid overlapping, even conflicting requirements, the MTSS should be the only regulations to which telecommunications providers are subject. As

¹ Thus excluded are wireless carriers and VoIP providers, among others.

a result, Ohio Admin. Code Chapter 4901:1-17 should explicitly exempt providers subject to Chapter 4901:1-5.

In the alternative, the OTA offers the following comments.

4901:1-17-01(A): The Commissions should clarify that this rule applies only to retail customers. Thus, the Rule should read “for any of the following retail services...”

4901:1-17-01(B): OTA supports the comments of its member, AT&T, with respect to the proposed definition for “Arrears.” The rules should recognize that there really is no difference between the definitions of (B) “Arrears” and (G) “Past due,” and accordingly should delete all references to “Arrears” from the definitions, replacing them with “past due.”

Rule 4901:1-17-02(D): OTA recommends deletion of the last sentence. Providing credit “procedures” would be too cumbersome and can be specific by customer. Call handling time by the companies’ representatives would be expanded if this rule is approved.

Rule 4901:1-17-03(A): One object of the new rules was to minimize excessive disclosure of detailed regulation to customers. The staff proposal appears to defeat this objective by requiring that “[e]ach utility shall advise the applicant, at the time of application, of each of the criteria available to establish credit.” That sentence should be deleted. Additionally, to avoid confusion, the rule should eliminate the word “any” from the last line, thus: “An applicant’s financial responsibility will be deemed established if the applicant meets one of the following criteria.” Also, again this rule would unnecessarily increase call handling time by the company’s representatives.

Rule 4901:1-17-03(A): OTA seeks clarification that §§4901:1-17-03(A)(2) and (4) are applicable to telecom companies, and that §§4901:1-17-03(A)(1), (3) and (5) are not.

Rule 4901:1-17-03(A)(1): This rule deems credit to be established if: “The applicant is the owner of the premises to be served or of other real estate within the territory served by the utility and has demonstrated financial responsibility with respect to that property.” Such a rule has no application to telecommunications providers – such as wireless carriers and VoIP providers – that have no “territory,” and therefore imposes a mandatory obligation on only one class of carrier. Accordingly, to maintain parity among telecommunications providers, this criterion should be eliminated as an acceptable credit method for telecommunications services.

Rule 4901:1-17-03(A)(3): As addressed at the Commission’s workshop, this qualification appears to apply only to gas or electric service. The OTA seeks clarification in that regard.

Rule 4901:1-17-03(A)(5): This rule addresses the ability of a customer to “furnish a creditworthy guarantor to secure payment of bills in an amount sufficient for a sixty-day supply of service.” The OTA seeks affirmation that this rule is not mandatory for telecommunications companies. Revised Code §4933.17(A), from which this safeguard is derived, applies to entities engaged in the business of furnishing gas, natural gas, water or electricity. While many OTA members offer this option, very few telecommunications customers accept it.

Rule 4901:1-17-06: This rule is unreasonably lenient with respect to deposit refunds. OTA recommends retaining criterion (2) – acceptable payment history – but to define that criterion as “no occasions” of late payment. Further, OTA recommends eliminating criteria (1) and (3) entirely.

Rule 4901:1-17-08: This rule refers to Rule 4901:1-17-03; as noted above, the OTA seeks confirmation that only two provisions of Rule 4901:1-17-03 – subdivisions (A)(2) and (A)(4) – apply to telephone companies.

Appendix A Questions

While the majority of these questions posed in Appendix A of the Entry have no bearing on the telecommunication industry, the OTA seeks clarification and confirmation concerning three questions under the heading of “Other:”

Q1. Should customers be permitted to choose the monthly due date of their bills on an annual basis? If so, should there be any limits on the date selected? For companies which do permit the customers to select their due date on an extended basis, please explain how your program works and the impact it has on bill payment.

A1. It is OTA’s understanding that this query does not apply to telecommunications companies. The OTA requests confirmation in this regard.

Q3. With the proposed elimination of payday lenders as authorized payment agents, what other outlets are readily available to customers that are, or could be authorized payment agents? What is the cost and what equipment, if any, is required to establish an authorized payment agent? For example, if neighborhood drugstores became payment agents, what would be the cost associated with establishing that new authorized payment agent location? For those companies that still have company-owned payment centers, please list the locations(s) of those centers.

A3. OTA defers to those companies commenting for company specific information, but again objects to the Staff proposal, which would eliminate lawful legitimate businesses (i.e. “payday lenders”) from the options available to utilities and their customers.

Q7. In proposed Rules 4901:18-06(A)(5)(e) and 4901:17-04(A), O.A.C., an existing customer, if disconnected, must pay the amount past due listed on the disconnection notice, and may be required to pay a reconnection fee and a security deposit to be reconnected. Proposed Rule 4901:1-17(D), O.A.C., provides that any unpaid charges for previous residential service must be paid before service may be re-established (in addition to re-establishing the applicant’s credit). What should be the required time interval between when the provisions of Rule 4901:1-17-03(D), O.A.C., which is applicable to an applicant for service, apply as opposed to an existing customer under proposed Rules 4901:1-18-06(A)(5)(e) and 4901:1017-04(A), O.A.C.? In other words, how long must a customer’s service be disconnected before the customer or former customer is considered a new applicant pursuant to proposed Rule 4901:1-17-03(D), O.A.C.?

A7. OTA members are governed by the existing Minimum Telephone Service Standards, Ohio Admin. Code Chapter 4901:1-5. Rule 4901:1-5-10 addresses these concerns. Once a customer's service is disconnected for nonpayment, the customer should be considered a new applicant.

Respectfully submitted,

OHIO TELECOM ASSOCIATION

By: /s/ Thomas E. Lodge
Thomas E. Lodge (0015741)

Thompson Hine LLP
41 South High Street, Suite 1700
Columbus, Ohio 43215-6101
Telephone (614) 469-3200
Fax (614) 469-3361

Its Attorney

590600.4

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/10/2008 4:08:35 PM

in

Case No(s). 08-0723-AU-ORD

Summary: Comments - Comments of the Ohio Telecom Association electronically filed by Mr. Thomas E Lodge on behalf of Ohio Telecom Association