

**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.)	

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL,
THE APPALACHIAN PEOPLE'S ACTION COALITION,
EDGEMONT NEIGHBORHOOD COALITION,
EMPOWERMENT CENTER OF GREATER CLEVELAND,
CONSUMERS FOR FAIR UTILITY RATES,
CLEVELAND HOUSING NETWORK AND
THE NEIGHBORHOOD ENVIRONMENTAL COALITION**

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December 5, 2008

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In order to ensure that Ohio residential telephone consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC"), the Appalachian People's Action Coalition, Edgemont Neighborhood Coalition, Empowerment Center of Greater Cleveland, Consumers for Fair Utility Rates, Cleveland Housing Network and The Neighborhood Environmental Coalition (collectively, "Consumer Groups") file this application for rehearing of the Public Utilities Commission of Ohio's ("Commission's" or "PUCO's") November 5, 2008 Finding and Order ("Order") in these proceedings, as amended nunc pro tunc by an Entry issued on November 12, 2008. The Consumer Groups file this Application for Rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

In the Order, the Commission changed two provisions of the Minimum Telephone Service Standards ("MTSS") governing the disconnection of basic local exchange service

(“basic service”), either as stand-alone service or as part of a bundle.¹ The disconnection rule that is in effect requires all local exchange carriers (“LECs”) to allocate customers’ partial payments first to past due regulated local service charges, then to any current local charges, before being applied to any toll or nonregulated charges.²

Under new Rule 10(C), however, incumbent LECs (“ILECs”) may first disconnect a customer’s local telephone service for nonpayment, then will reconnect the customer to the ILEC’s stand-alone basic service so long as the customer pays the ILEC’s tariffed stand-alone basic service rate and associated taxes and government surcharges, plus any applicable deposit and reconnection fee, and upon the customer entering into a payment arrangement for all unpaid regulated charges. In addition, new Rule 10(B) allows LECs to disconnect a customer’s bundled local service for nonpayment of charges for other services in the bundle, including charges for unregulated services.

Unlike Rule 17(C) or the previous Rule 10(B), the Commission’s new rules do nothing to protect consumers from disconnection of their telephone service for nonpayment of charges for other – including nonregulated – services. In adopting new Rules 10(B) and (C), the Order is unreasonable and unlawful in the following respects:

1. By allowing ILECs to disconnect customers’ local telephone service for nonpayment of other, including nonregulated, charges, the Order unreasonably and unlawfully places consumers at risk of losing their local telephone service even though they may have made a substantial payment to the ILEC.

¹ The rules are Ohio Adm. Code 4901:1-5-10(B) (“Rule 10(B)”) and Ohio Adm. Code 4901:1-5-10(C) (“Rule 10(C)”).

² Ohio Adm. Code 4901:1-5-17(C) (“Rule 17(C)”). As discussed herein, in 2007 the Commission replaced this rule with a version of Rule 10(B) that prevented disconnection of a customer’s local exchange service for nonpayment by requiring LECs to allow the customer to continue receiving stand-alone basic service so long as the customer paid the LEC’s tariffed stand-alone basic service rate and associated taxes and government surcharges. This version of Rule 10(B) was to have become effective on January 1, 2009, but was rescinded by the Order.

2. By removing the prohibition against a LEC disconnecting a customer's basic local service so long as the customer makes at least a partial payment to the LEC, the Order unreasonably and unlawfully puts customers at risk of incurring additional deposits and reconnection charges that they would not have incurred under Rule 17(C) or previous Rule 10(B).
3. The Order requires reconnection to stand-alone basic local exchange service if customers enter into a payment arrangement with the ILEC, but unreasonably and unlawfully places no obligation on the ILEC to inform customers of this right and places no restrictions on the payment arrangements the ILECs may exact.
4. The Order unreasonably and unlawfully did not provide protection for Lifeline customers who subscribe to a bundled service.
5. The Order unreasonably and unlawfully failed to include needed consumer protections in new Rules 10(B) and (C) that should be included in the rules if the Commission retains them.

The Consumer Groups seek rehearing of the Commission's Order. The grounds for this Application for Rehearing are set forth in the accompanying Memorandum in Support. The Commission should modify the Order as discussed in the Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

As the Consumer Groups detailed in their Comments regarding the PUCO Staff's proposal to eliminate previous Rule 10(B), the PUCO has long had a goal of ensuring that consumers stay connected to basic telephone service in situations where they pay less than the total amount on bills that include basic service and other services.³ In the Order, however, the Commission abandoned this goal by doing away with the consumer protections in the MTSS that allowed customers to avoid having their local service disconnected for nonpayment of unregulated charges and that allowed customers to maintain dialtone by making a partial payment to their local service provider.⁴

The Order adopted new Rules 10(B) and 10(C). New Rule 10(B) allows LECs to disconnect a customer's local service for nonpayment of unregulated services:

Where two or more regulated services and/or regulated and unregulated services are offered together under a package price, a failure to timely pay the entire package price may render as past due the charges for all services included in the package and, as such, may result in disconnection of all services included in the package.

³ Consumer Groups Comments (August 22, 2008) at 3-13.

⁴ Although it was adopted in July 2007, previous Rule 10(B) never went into effect.

Having eliminated the prohibition against disconnecting a customer's local service when the customer makes a partial payment to the LEC, in Rule 10(C) the Commission also subjects the customer to additional deposit and reconnection charges:

If a customer is disconnected for nonpayment of past due charges, the incumbent local exchange carrier (ILEC) shall, **upon request**, reconnect the customer to stand-alone basic local exchange service (BLES) upon the customer's payment of an amount sufficient to cover the ILEC's tariffed rate for stand-alone BLES service, all associated taxes and government mandated surcharges (i.e., universal service fund and 9-1-1 service charges), **and any applicable deposit and reconnection fee**, and upon the customer entering into a payment arrangement for all unpaid regulated charges. If the customer is disconnected for nonpayment of past due charges, the local exchange carrier (LEC) may require the customer to pay the entire amount of all unpaid regulated charges, **along with any applicable deposit and reconnection charges**, prior to reconnecting service of any kind to the customer other than stand-alone BLES. (Emphasis added.)

As a result, consumers – especially Lifeline customers – have lost essential protections against disconnection of their basic service. The Commission should abrogate the Order and modify it as discussed herein.

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.” The Consumer Groups filed comments and reply comments in this proceeding.

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.” As shown herein, the statutory standard for abrogating and modifying the Order is met here.

III. ARGUMENT

The rules that new Rules 10(B) and (C) are meant to replace help to ensure that consumers were able to maintain their local service without interruption. Rule 17(C) applied partial payments first to “past due regulated local service charges, then to any current local charges, before being applied ... to any toll or nonregulated charges unless the subscriber pays the entire amount past due or more.”⁵ If the customer pays the entire past due amount or more, then “any amount paid over the amount past due shall be applied first to current local charges.”⁶ The Commission’s intent in amending the partial payment rule was to “protect a customer’s interest in keeping current on the local service

⁵ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD, Finding and Order (May 29, 2001), Appendix A, adopted Ohio Adm. Code 4901:1-5-17(C) (“Rule 17(C)”).

⁶ *Id.*

portion of his bill by making a partial payment that is large enough to do so – thereby avoiding local service disconnection....”⁷

Previous Rule 10(B), which never became effective, allowed a customer to avoid disconnection of service by paying at least the LEC’s tariffed rate for stand-alone basic service, plus taxes and surcharges. This also applied to customers of a bundled service package, although such customers could lose the services other than basic service that were included in the bundle. At least the customers could retain uninterrupted access to dialtone service.

In the Order, however, the Commission eliminated customers’ ability to avoid complete disconnection of local service by making at least a partial payment of the past due amount. Instead of preventing disconnection, new Rule 10(C) applies only **after** a customer’s service has been disconnected. In addition, new Rule 10(B) allows for the disconnection of a customer’s local service if the customer subscribes to a service bundle that includes local service and other, including unregulated, services and does not pay the entire bill. These rules place all customers at risk of losing access to dialtone, and have a particular impact on Lifeline customers.

- A. By allowing ILECs to disconnect customers’ local telephone service for nonpayment of other, including nonregulated, charges, the Order unlawfully and unreasonably places consumers at risk of losing their local telephone service even though they may have made a substantial payment to the ILEC.**

As the Consumer Groups described at length in their Comments,⁸ the Commission has for at least two decades had a goal of ensuring that consumers do not lose access to a dialtone. Rule 17(C) helped to further this goal by allowing consumers to stay connected

⁷ Id. at 142.

⁸ Consumer Groups Comments at 3-13.

to at least basic telephone service by making a partial payment on bills that include basic service and other services. Similarly, previous Rule 10(B) allowed consumers to maintain dialtone by paying at least enough to cover the LEC's tariffed rate for stand-alone basic service.

In adopting new Rules 10(B) and 10(C), however, the Commission has abandoned this vital consumer protection. New Rule 10(B) for the first time places customers' local service at risk of disconnection for nonpayment of other charges, including charges for unregulated services. Given that LECs are no longer obligated to provide service applicants and customers with "all necessary information ... to obtain the most economical local service(s) conforming to the customer's stated needs,"⁹ consumers are more likely to be marketed – and pressured into buying – service packages that include unregulated services the consumers neither want nor need. Further, unlike the prior rules, new Rule 10(C) addresses only procedures that LECs must follow **after** a consumer's service has been disconnected, and thus does not provide consumers with a means to prevent disconnection of their local service.

In addition, the change in the rule is based on faulty reasoning. The Commission asserted that the rule allowing customers to maintain their stand-alone basic service should be changed because only ILECs are **required** to provide stand-alone basic service and the rule was thus unduly burdensome on the ILECs.¹⁰ But, as the Consumer Groups pointed out in their Comments, competitive local exchange carriers ("CLECs") are not prohibited from offering stand-alone basic service and indeed at least eight CLECs have a

⁹ Previous Ohio Adm. Code 4901:1-5-07(C)(2). This provision was removed from the MTSS in 2007.

¹⁰ Order at 6-7.

tariffed stand-alone basic service even though they are not required to.¹¹ Like Rule 17(C), previous Rule 10(B) would have applied to **any** LEC – ILEC or CLEC – that offers stand-alone basic service and is thus not discriminatory.

The Commission has unlawfully and unreasonably adopted new Rules 10(B) and 10(C). The Commission should abrogate the Order and reinstate previous Rule 10(B).

B. By removing the prohibition against a LEC disconnecting a customer's basic local service so long as the customer makes at least a partial payment to the LEC, the Order unlawfully and unreasonably puts customers at risk of incurring additional deposits and reconnection charges that they would not have incurred under Rule 17(C) or previous Rule 10(B).

As discussed above, both Rule 17(C) and previous Rule 10(B) allow consumers to **avoid** disconnection by making either a partial payment or a payment sufficient enough to cover the LEC's tariffed rate for stand-alone basic service. These rules ensure that consumers stay connected to local service while they make arrangements with the LEC to pay off the past due charges for other regulated services and/or unregulated services. Under these rules, consumers would avoid the additional costs involved in disconnection and reconnection of service. The rules further the Commission's long-standing goal of helping consumers stay connected to dialtone service.

New Rule 10(C), however, applies only **after** a customer has been disconnected, and thus does not protect customers from disconnection. Instead, the result of new Rule 10(C) is that more consumers will be unable to contact family members, employers, and medical and emergency personnel. In addition, consumers would be subjected to additional charges (i.e., reconnection charges and a deposit) because LECs, including

¹¹ Consumer Groups Comments at 15.

ILECs, would not be required to offer consumers the option of at least maintaining stand-alone basic service prior to disconnection.

Further, new Rule 10(C) does not require LECs to offer consumers **reasonable** payment arrangements in order to be reconnected to basic service. Thus, consumers seeking to be reconnected to the ILEC's basic service could be pressured into accepting payment arrangements they cannot afford.

There is also no requirement that the ILEC inform its customers of their reconnection rights, especially at the time of disconnection. There is not even a requirement that the LEC inform customers if they inquire about reconnection.

New Rule 10(C) is unlawfully and unreasonably one-sided in favor of the LEC. The Commission should abrogate the Order and reinstate previous Rule 10(B).

C. The Order requires reconnection to stand-alone basic local exchange service if customers enter into a payment arrangement with the ILEC, but unlawfully and unreasonably places no obligation on the ILEC to inform customers of this right and places no restrictions on the payment arrangements the ILECs may exact.

Under new Rule 10(C), ILECs must allow a customer who has been disconnected for nonpayment to reconnect to the ILEC's stand-alone basic service. The rule, however, applies **only upon the customer's request**.

The rule is filled with problems for consumers. First, the ILEC is under no obligation to inform customers of this right. Although all LECs are required to inform new customers about the availability of stand-alone basic service,¹² the MTSS do not require that such a disclosure be made to customers who have been disconnected for nonpayment and who are attempting to reconnect with the ILEC's service. ILECs,

¹² Ohio Adm. Code 4901:1-4-06(B)(3)(b). It is highly unlikely that a customer who first subscribed to the ILEC's services months or years earlier would remember being informed that stand-alone basic service is available from the ILEC.

therefore, would be free to pressure consumers into buying higher-priced bundles before even mentioning the availability of stand-alone basic service.

Second, nothing in the MTSS requires that the ILEC offer reasonable payment arrangements. ILECs could offer a customer a “take it or leave it” payment arrangement that might not be affordable for the customer. The customer could then be pressured into accepting such payment arrangements in order to be reconnected.¹³

New rule 10(C) unlawfully and unreasonably puts customers at a disadvantage concerning reconnection of local service. The Commission should abrogate the Order and reinstate previous Rule 10(B).

D. The Order unlawfully and unreasonably did not provide protection for Lifeline customers who subscribe to a bundled service.

In their Comments, the Consumer Groups pointed out that the PUCO Staff’s proposal would especially affect Lifeline customers.¹⁴ In the Order, however, the Commission did not address the affect of the new rules on, or provide special protection for, Lifeline customers.

New Rules 10(B) and (C) present many of the same problems for Lifeline customers that the PUCO Staff’s proposal contained. For example, under the Lifeline rules, Lifeline-eligible customers do not have to pay service connection charges and can subscribe to Lifeline service without paying a deposit.¹⁵ For Lifeline-eligible customers who owe a past-due amount to the LEC, payment arrangements must also be offered with

¹³ Although the customer may be able to obtain local service from other sources (e.g., a CLEC or a VoIP provider), there are numerous reasons why the customer may feel pressured to stay with the ILEC (e.g., the customer may be unaware of the availability of these sources, their services may be too costly or do not meet the customer’s needs).

¹⁴ Consumer Groups Comments at 18.

¹⁵ Ohio Adm. Code 4901:1-4-06(B)(1)(a) and (b).

“the initial payment not to exceed twenty-five dollars before service is installed, with the balance for regulated local charges to be paid over six equal monthly payments.”¹⁶

The Lifeline rules, however, do not address **reconnection** of service and new Rule 10(C) makes no special provision for Lifeline customers who are disconnected for nonpayment. Thus, the rule contains no consumer protections for Lifeline-eligible customers.

In adopting new Rules 10(B) and (C), the Commission asserted that the new rules “appropriately balance[] the policy of ensuring the availability of adequate basic local exchange service to the citizens of the state, while not unduly disadvantaging the ILECs.”¹⁷ The Commission also stated that R.C. 4927.02,

in part, instructs the Commission to ensure the availability of adequate basic local exchange service to the citizens of Ohio; to rely on market forces to support a healthy and sustainable, competitive telecommunications market; to recognize the continuing emergence of a competitive environment through flexible regulatory treatment; to consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services subject to Commission regulation; and to not unduly disadvantage providers of competing services.¹⁸

The Commission, however, failed to consider that it is also state policy “to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service”¹⁹ and to “[p]rotect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs.”²⁰ New Rules 10(B) and (C) undermine both of these policies by subjecting customers’ –

¹⁶ Ohio Adm. Code 4901:1-4-06(B)(5).

¹⁷ Order at 7 (emphasis added).

¹⁸ Id. at 6.

¹⁹ R.C. 4927.02(A)(2).

²⁰ R.C. 4927.02(A)(8).

including Lifeline customers' – basic service to disconnection for nonpayment of unregulated charges. The policies are also undermined by the fact that customers' – including Lifeline customers' – basic service may be disconnected **before** ILECs are required to inform the customers about the availability of stand-alone basic service, and thus avoid reconnection charges and deposits.

New Rules 10(B) and (C) unreasonably and unlawfully eliminate protections for Lifeline customers. The Commission should abrogate the Order and reinstate previous Rule 10(B).

E. The Order unreasonably and unlawfully failed to include needed consumer protections in new Rules 10(B) and (C) that should be included in the rules if the Commission retains them.

As discussed above, new Rules 10(B) and (C) fail to adequately protect consumers from disconnection of local service for nonpayment of local service, including unregulated charges. The Commission should reinstate previous Rule 10(B).

If the Commission, however, decides not to reinstate previous Rule 10(B), the Commission should make the following changes to new Rules 10(B) and (C) in order to provide consumers with the protections discussed herein (changes are in bold):

(B) Where two or more regulated services and/or regulated and unregulated services are offered together under a package price, a failure to timely pay the entire package price may render as past due the charges for all services included in the package and, as such, may result in disconnection of all services included in the package, **subject to the requirements of section (C) of this rule.**

(C) If a customer **is has received a notice of** disconnection~~ed~~ for nonpayment of past due charges, the ~~incumbent~~ local exchange carrier (ILEC) shall, ~~upon request, reconnect~~ **inform** the customer ~~to~~ **whether** stand-alone basic local exchange service (BLES) **is available** upon the customer's payment of an amount sufficient to cover the ILEC's tariffed rate for stand-alone BLES service, **and** all associated taxes and government mandated surcharges (i.e., universal service fund and 9-1-1 service charges), ~~and any applicable deposit and~~

~~reconnection fee~~, and upon the customer entering into a payment arrangement for all unpaid regulated charges **under reasonable terms and conditions**. If ~~the a~~ customer **other than a Lifeline customer** is disconnected for nonpayment of past due charges, the ~~local exchange carrier (LEC)~~ may require the customer to pay the entire amount of all unpaid regulated charges, along with any applicable deposit and reconnection charges, prior to reconnecting service of any kind to the customer other than stand-alone BLES.

IV. CONCLUSION

In adopting new Rules 10(B) and (C), the Commission failed to appropriately balance the state policies of R.C. 4927.02. The Commission went too far in trying to avoid **unduly** disadvantaging the ILECs. In so doing, the Commission undermined the availability of adequate service at just and reasonable rates for consumers, including Lifeline customers.

New Rules 10(B) and (C) remove several important consumer protections from the MTSS. In order to protect Ohio consumers – especially Lifeline consumers – who subscribe to service bundles, the Commission should abrogate the Order and reinstate previous Rule 10(B). In the alternative, the Commission should modify new Rules 10(B) and (C) as the Consumer Groups recommend, consistent with the Commission’s long-held goal of ensuring that residential consumers have a means to retain at least basic service.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing was served by first class United States Mail, postage prepaid, to the persons list below, on this 5th day of December 2008.

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Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel, The Appalachian People's Action Coalition, Edgemont Neighborhood Coalition, Empowerment Center of Greater Cleveland, Consumers for Fair Utility Rates, Cleveland Housing Network and the Neighborhood Environmental Coalition electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel