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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162.	)))	Case No. 10-1010-TP-ORD

APPLICATION FOR REHEARING BY MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS

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APPLICATION FOR REHEARING BY MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS

In order to ensure that residential telephone customers receive adequate service at reasonable rates, the undersigned members of Ohioans Protecting Telephone Consumers ("OPTC")[1] file this application for rehearing of the Entry issued by the Public Utilities Commission of Ohio ("Commission" or "PUCO") in this proceeding on January 19, 2011 ("January 19 Entry"). This application for rehearing is filed under R.C. 4903.10 and Ohio Adm. Code 4901-1-35.

The members of OPTC assert that the Entry was unjust, unreasonable and unlawful in the following particulars:

- The Commission erred in adopting a customer notice for detariffing that is inaccurate and inadequate.
- The Commission erred in failing to adopt a process for accomplishing detariffing that will adequately protect customers.
- The Commission erred in failing to accomplish detariffing through a rulemaking.

[1] OPTC is an alliance of consumer, legal and low-income advocates that united to ensure that consumer protections were contained in Sub. S.B. 162, and continue that advocacy for the rules implementing the new law.

- The Commission erred in failing to require adequate filings in local exchange carrier ("LEC") and competitive eligible telecommunications carrier ("CETC") certification proceedings.

The Entry should be modified and/or abrogated to correct these errors. 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

In this proceeding, the Commission adopted rules to implement Substitute Senate Bill 162 ("Sub. S.B. 162"), which became effective on September 13, 2010. Sub. S.B. 162 required a substantial rewrite of the Ohio Administrative Code provisions pertaining to telephone companies; the rewritten rules became effective January 20, 2011.

The January 19 Entry accomplished, inter alia, two significant steps toward implementing the rules. First, the Entry adopted a new telecommunications filing form,[2] along with supplemental forms for specific purposes, including carrier certification, CETC designation for high-cost fund purposes, CETC designation for low-income fund purposes, and detariffing.[3] With regard to carrier certification and CETC designation, as explained further below, the Commission erred in failing to follow up on the statements made in its October 27, 2010 Opinion and Order that adopted Ohio Adm. Code Chapter 4901:1-6.

[2] January 19 Entry at 1.

[3] The detariffing form actually consists of two parts: one for all carriers, including those that offer basic local exchange service ("BLES"), and another for carriers that do not offer BLES.

With regard to detariffing, although the Commission refers to new Ohio Adm. Code 4901:1-6-11(B) as authority,[4] the authority actually derives from R.C. 4905.30, as amended by Sub. S.B. 162. R.C. 4905.30(A) requires tariffing of all utility services, but R.C. 4905.30(B) provides that "[d]ivision (A) of this section applies to a telephone company only regarding rates, joint rates, tolls, classifications, charges, rules, and regulations established pursuant to sections 4905.71, 4927.12, 4927.13, 4927.14, 4927.15, 4927.18, and 4931.47 of the Revised Code."[5]

Thus the Commission adopted Ohio Adm. Code 4901:1-6-11(A)(2), which "requires that services not specifically listed in Rule 4901:1-6-11(A)(1), O.A.C., shall not be included in tariffs filed with the Commission, but shall be subject to Commission oversight and regulation as provided in Chapter 4927, Revised Code, and Chapter 4901:1-6 O.A.C." Thus those services "not specifically listed" in Rule 11(A)(1) are to be detariffed.[6] This in fact includes the vast majority of LECs' services, including bundles that include basic service functionality, as well as the many vertical services offered by telephone companies in Ohio.

As discussed below, the transition from a tariffing regime to one where service is not provided via tariff is a fundamental one, necessitating significant changes in the relationship between the utility and its customers. The primary source of that change is

[4] January 19 Entry at 1.

[5] The listed statutes require tariffs (or allow the Commission to adopt rules that require tariffs) for: R.C. 4905.71 (tariffs for pole attachments and conduit); 4927.12 (BLES rates); 4927.13 (Lifeline rates); 4927.14 (rates for the communicatively impaired); 4927.15 (carrier access, N-1-1, pole attachments and conduits, payphone lines, toll presubscription, and telecommunications relay service); 4927.18 (inmate operator services); and 4931.47 (9-1-1).

[6] Ohio Adm. Code 4901:1-6-11(A) essentially duplicates the list from R.C. 4905.30(B).

the fact that, without tariffs, the relationship is governed by **contract** principles, rather than the traditional "filed tariff doctrine."

In the face of this sea change in the customer/utility relationship, what has the Commission done? In the first place, the Commission has not even sought to explore the implications of the change, such as through a rulemaking specifically permitted by the new law.[7] This failure to examine the issues involved and their implications has led to a process that will not adequately inform customers of their rights and responsibilities under the new regime. And, most immediately, it has led to the adoption of a customer notice that fails to inform customers of the ramifications of the change, a notice that is in fact contrary to the notice required the last time the Commission required detariffing, which involved the detariffing of only intrastate toll service.

For the reasons discussed herein, the January 19 Entry must be abrogated and modified.

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." OPTC filed comments, reply comments, and applications for rehearing in this case.

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)

[7] See R.C. 4927.03(E).

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 January 19 Entry is met by this application for rehearing.

III. ARGUMENT

A. The Inadequacy Of The Customer Notice

- The Commission erred, and the January 19 Entry was unjust, unreasonable and unlawful, in adopting a customer notice for detariffing that is inaccurate and inadequate.

Attached to the January 19 Entry is a notice that all LECs are required to send to their residential customers.[8] That notice fails to adequately and accurately inform customers about the changes in their service that result from detariffing, thus violating R.C. 4927.06(A)(1).[9]

The last time the Commission engaged in detariffing for residential customers was in Case No. 06-1345-TP-ORD, *In the Matter of the Review of Chapter 4901:1-6,*

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[8] The Entry also contained a virtually identical notice for non-residential customers.

[9] "Any communication by the company, including, but not limited to, a solicitation, offer, or contract term or condition, shall be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations."

Ohio Administrative Code ("06-135"). In an Entry dated September 19, 2007, the Commission outlined the process to be utilized "in order to effectuate the detariffing of … all regulated toll services."[10]

On October 19, 2007, the Office of the Ohio Consumers' Counsel ("OCC") filed an application for rehearing of the September 19 Entry ("OCC 06-1345 Application for Rehearing"). OCC objected to the customer notice prescribed in the Entry, citing the Ohio Supreme Court ruling that

> [e]very public utility in Ohio is required to file, for commission review and approval, tariff schedules that detail rates, charges and classifications for every service offered. R.C. 4905.30. And a utility must charge rates that are in accordance with tariffs approved by, and on file with, the commission. R.C. 4905.22.[11]

This legal requirement has changed, for telephone companies, with the change to R.C. 4905.30 described above. As OCC stated, "The use of tariffs and the concomitant 'filed rate doctrine' have been important tools in public utility regulation."[12] But those tools are now gone for most telephone services.

OCC also stated,

> As the Federal Communications Commission ("FCC") recognized when it no longer required interstate long distance prices, terms and conditions to be filed with the FCC and allowed them to be posted on the interexchange carriers' ("IXCs"') websites, **eliminating a tariff requires the establishment of individual contracts between each customer and the telephone company**. "Detariffed" services cannot have the qualities of services with Commission-filed and Commission-approved tariffs, where

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[10] 06-1345, Entry (September 19, 2007) ("06-1345 Entry") at 2 The September 19, 2007 Entry referred to also detariffed "Tier 2 nonresidential services." Id.

[11] *Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 150 (1991); see also *Horning v. Columbus & Southern Ohio Electric Co.*, Case No. 82-1209-EL-CSS, Opinion and Order (January 31, 1984).

[12] OCC 06-1345 Application for Rehearing at 4, citing, e.g., *Consumers' Counsel v. Pub. Util. Comm.*, 61 Ohio St.3d 396, 406-407 (1991).

the tariff has the force of law and with service users being charged with notice of their content.[13]

Further, as the FCC noted:

> Tariffs are the legally binding contracts that outline the rates, terms and conditions of long distance companies' services. Previously, the applicable tariff would govern the rates and terms of service, **even if the tariff was inconsistent with other information that long distance companies provided to consumers.**
>
> ...
>
> ... Detariffing means that long distance companies may no longer simply file a document called a "tariff" to notify the FCC about the rates, terms and conditions of long distance service and make those changes effective the next day. Generally, the agreement (instead of the federal tariff) between the long distance telephone company and consumer will be subject to the same contract and consumer protection laws as any other agreement.
>
> ... [S]tate contract law determines what constitutes an agreement between you and your long distance company.[14]

As OCC also stated, "Consumers deserve notification about the implications of detariffing, including the existence of a contract, the circumstances under which a contract is entered into, and the ability to rely on oral or written representations about the prices, service descriptions, and the terms and conditions of their service, which were irrelevant under a tariffing regime."[15]

In the 06-1345 Entry on Rehearing, the Commission agreed with OCC's view of the inadequacy of the originally-proposed notice in that case. The Commission stated,

> OCC's application for rehearing sets forth reasonable grounds and should be granted. Specifically, the Commission determines that the implications

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[13] OCC 06-1345 Application for Rehearing at 4, citing http://www.nrri.ohio-state.edu/dspace/bitstream/2068/377/1/Your+New+Relationship+With+Your+Phone+Company+-+_Detariffing_.pdf. and *Schmukler v. Ohio Bell Telephone Co.*, 116 N.E.2d 819, 825 (C.P., 1953). (emphasis added).

[14] See http://www.fcc.gov/Bureaus/Common_Carrier/News_Releases/2001/nrcc0130.html (emphasis added).

[15] OCC 06-1345 Application for Rehearing at 5.

> and ramifications for the detariffing of services should be identified to customers.[16]

Further, the Commission stated: "[T]he Commission staff is directed to include a section on the Commission's website informing residential customers regarding the ramifications of the detariffing of long distance service."[17]

The actual notice the 06-1345 Entry on Rehearing required to be provided to customers included the following language:

> Since long distance services will no longer be on file with the Commission, this means that the agreement reached between the customer and the company, instead of the document on file at the PUCO, will now control new services or changes in service. This agreement, whether it is verbal or written, will still be subject to consumer protections required and enforced by the PUCO.
>
> For any new services or changes in service, it will be important that you carefully review and confirm the price, terms and conditions.

By contrast, the residential customer notice contained in the January 19 Entry – addressing the detariffing of most telephone services – states as follows:

> RESIDENTIAL CUSTOMER NOTICE TEMPLATE
> [Date];
> [Salutation]:
> Beginning on [DATE], the prices, service descriptions, and the terms and conditions for services other than local flat rate service that you are provided by [COMPANY NAME] will no longer be on file at the Public Utilities Commission of Ohio (PUCO). This modification does not automatically result in a change in the prices, terms, or conditions of those services to which you currently subscribe. [NAME OF COMPANY] must still provide a customer notice at least fifteen days in advance of rate increases, changes in terms and conditions and discontinuance of existing services. [OPTIONAL INFORMATION (Additionally, you will be able to view the company's future service offerings in a [guidebook/catalog] online at [WEBSITE] or you can request a copy of this information by contacting the [COMPANY at ADDRESS/TOLL FREE NUMBER]].
>
> **Since these services will no longer be on file with the Commission, this means that the agreement reached between the customer and**

[16] 06-1345, Entry on Rehearing (October 31, 2007) ("06-1345 Entry on Rehearing") at 2.

[17] Id. at 3.

the company will control new services or changes in service. For any new services or changes in service, it will be important that you carefully review and confirm the price, terms and conditions.

If you have any questions about this matter, please call [COMPANY] at the toll free number, 8XX-XXX-XXXX, or visit us at [URL website]. You may also visit the consumer information page on the PUCO's website at puco.ohio.gov for further information.

Sincerely,
[COMPANY NAME]

(Emphasis added.) OCC submits that the emphasized one-sentence description does not do justice (pun intended) to the relationship that will now cover the customer's telephone service. Crucially, the agreement between the customer and the company will cover not only "new services or changes in service" but also the customer's service that is in effect at the time of detariffing.

From the earlier 06-1345 notice, the Commission has also deleted the following language: "This agreement, whether it is verbal or written, will still be subject to consumer protections required and enforced by the PUCO."[18] Although the customer protections under the new law are admittedly fewer than those available under the old law and rules, the new law still contains protections for all telephone services, protections that are to be enforced by the Commission.[19] Indeed, those protections, codified in Ohio Adm. Code 4901:1-6-16, are focused on the contents of oral or written communications from the telephone companies, thus encompassing such "agreements."

It should also be noted that the opening sentence in the January 19 Entry referring only to "the prices, service descriptions, and the terms and conditions for services other

[18] Hypertechnically, the reference should have been to "oral or written" agreements.

[19] R.C. 4927.06.

than local flat rate service" is somewhat misleading, in that Ohio Adm. Code 4901:1-11 requires tariffs for "BLES installation and reconnection fees and lifeline service rates or discounts…." Other services used by residential customers are also required to be tariffed.[20]

Equally importantly, the Commission did not direct its staff – as it did with the relatively simple detariffing of long-distance service – to include a section on the Commission's website informing residential customers regarding the ramifications of the detariffing of all of these other services. It is clear that those ramifications go far beyond the simple and simplistic language in the customer notice required by the January 19 Entry – a notice that is required to be sent to customers only once. The Commission must take another tack to inform customers of those ramifications.

B. The Process For Detariffing

- The Commission erred, and the January 19 Entry was unjust, unreasonable and unlawful, in failing to adopt a process for accomplishing detariffing that will adequately protect customers.

As discussed above, the notice that the Commission has required to be provided to customers is completely inadequate to inform customers of the implications and ramifications of the transition from a tariffed regime to one that is based on agreements between the company and the customer. In order to ensure that customers are adequately informed, the Commission should, at the very least, have put the necessary contents for such notices, as well as other related issues, out for public comment.

The discussion here does not relate to the physical process of the withdrawal of tariffs, which might be accomplished as simply as eliminating a link on the

[20] Including N-1-1 service, toll presubscription, and telecommunications relay service.

Commission's website. The discussion involves how the Commission is to recognize and implement the fundamental change in the relationship between residential customers and their telephone companies that occurred as a result of the amendments to R.C. 4905.30 contained in Sub. S.B. 162. This discussion does not claim to be an exhaustive list of the issues; instead it highlights a few of the issues that should have led to the Commission's conclusions on how these changes are to occur.

For example, the Commission must ensure that, in fact, the telephone companies – all of which are required to withdraw their tariffs for most of their services – actually have written agreements with each of their customers.[21] And the Commission should ensure up-front that those contracts do not contain provisions that violate R.C. 4927.06 and Ohio Adm. Code 4901:1-6-16.

This is especially important because it seems likely that some telephone companies may want to simply send their customers a notice to the effect that "If you use our service, you have agreed to the contract that we have prepared and that is available on our website or will be provided to you on request."[22] The Commission must consider such issues in order to ensure "that the implications and ramifications for the detariffing of services should be identified to customers."[23]

A small sampling of other key issues would include:

Early termination fees: Fees imposed for terminating service before the end of a contract term ("ETFs") have not really been a factor for residential wireline telephone

[21] Although it might be possible for the smallest companies to have individual oral contracts with each of their customers, it seems highly infeasible.

[22] And by making the call to request a copy of the contract, will the customer have agreed to the contract?

[23] 06-1345 Entry on Rehearing at 2.

customers, although they have been a major issue for wireless customers[24] and also for customers of broadband Internet access services.[25] Especially in the transition from a tariff-based regime to a contract-based regime for telephone services, it is vitally important that telephone customers not be subjected to unfair ETFs. At the very least, this requires clear and conspicuous disclosure of the costs, terms and conditions of such fees. Indeed, the Commission should consider whether the imposition of an ETF for an already-provided, rather than new, service is in itself inherently unfair.

Mandatory arbitration clauses: Another issue that has been seen in telephone company contracts is that of mandatory arbitration clauses.[26] Such clauses require a customer disputing some aspect of service (billing, disconnection, or other terms and conditions) to engage in arbitration in order to resolve the problem. Such clauses have been found to be in violation of state policies.[27]

Forum and other aspects of telephone complaints: This leads to another issue regarding ways in which customers can express dissatisfaction with their telephone service. For example, the arbitration clauses referred to above are often accompanied by prohibitions on class action lawsuits.[28] These have also been found to violate state policy.[29] As the Commission knows, it has not entertained "class action" complaints,[30]

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[24] See http://abcnews.go.com/Business/fcc-expands-early-termination-fee-probe/story?id=9665792.

[25] See http://consumerist.com/2010/01/verizon-fios-early-termination-fee-to-double-this-week.html.

[26] See http://pegasus.rutgers.edu/~rcrlj/articlespdf/constant.pdf.

[27] E.g., *Powertel, Inc. v. Bexley*, 743 So.2d 570 (Fla. Dist. Ct. App., 1999).

[28] Id.

[29] Id.

[30] E.g., *Industrial Energy Users – Ohio v. Northeast Ohio Public Energy Council*, Case No. 04-1129-EL-CSS, Entry (November 15, 2004).

although principles established in individual complaints create precedents that will apply to the situations of other customers.[31] And Ohio law has been clear that complaints about utility service must be brought before the Commission rather than in state courts.[32]

But among the changes wrought by Sub. S.B. 162 was the adoption of R.C. 4927.21. For telephone companies, this statute replaces R.C. 4905.26[33] – under which the doctrine of exclusive Commission jurisdiction developed. The new statute reads,

> Any person **may** file with the public utilities commission, or the commission may initiate, a complaint against a telephone company other than a wireless service provider, alleging that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, **or in violation of or noncompliance with any provision of sections 4927.01 to 4927.20 of the Revised Code or a rule or order adopted or issued under those sections.** Any dispute between telephone companies, between telephone companies and wireless service providers, or between wireless service providers that is within the commission's jurisdiction under sections 4927.01 to 4927.20 of the Revised Code may be brought by a filing pursuant to this division.[34]

The authority of the Commission under R.C. sections 4927.01 to 4927.20 is decidedly limited. Indeed, R.C. 4927.03(D) states, "Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company." By contrast, the complaint

[31] Id.

[32] See *Corrigan v. Illuminating Co.*, 122 Ohio St.3d 265, 2009-Ohio-2524 (2009).

[33] See R.C. 4927.03(C).

[34] R.C. 4927.21(A) (emphasis added).

statute formerly applicable to telephone companies was much broader in its terms.[35] Clearly, given the now-limited ability of the Commission to address the "quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company" there are at least questions whether the Commission has exclusive jurisdiction over complaints as to telephone service and even over the subjects authorized in R.C. Chapter 4927, where that service is governed by contract.[36]

These are just a few of the issues relevant to the transition from a tariff-based to a contract-based regime. The Commission should also gather accounts of the experience of other states that have engaged in this transition.[37] Indeed, this Commission should consult with the FCC regarding its experience with regard to the detariffing of interstate long-distance service. (It must be recalled, however, that the detariffing of a single service – long-distance calling – would be a significantly smaller source of problems than the mass detariffing required under the new Ohio law.)

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[35] R.C. 4905.26 states,

> Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission **shall** fix a time for hearing and **shall** notify complainants and the public utility thereof.

(Emphasis added).

[36] *State, ex. rel. Ohio Power Co. v. Harnishfeger*, 64 Ohio St.2d 9 (1980).

[37] See, e.g., California PUC, Resolution T-17203 (April 6, 2009), accessible at http://docs.cpuc.ca.gov/WORD_PDF/FINAL_RESOLUTION/100084.PDF.

C. The Commission Should Have Engaged In A Rulemaking To Accomplish Detariffing.

- The Commission erred, and the January 19 Entry was unjust and unreasonable, in failing to accomplish detariffing through a rulemaking.

As discussed in Section A. above, the notice to customers attached to the January 19 Entry is completely inadequate to inform those customers of the implications and ramifications of the change from the old tariff-based regime to the new contract-based regime. As discussed in Section B. above, the Commission erred by failing to address the key issues involved in the transition through a public proceeding.

This error is especially egregious given that the Commission was statutorily authorized to consider these issues in a rulemaking. R.C. 4927.03(E) states, in pertinent part, "Subject to the authority granted to the commission under this chapter, the commission may adopt other rules, **including rules regarding the removal from tariffs of services that were required to be filed in tariffs prior to the effective date of this section**, as it finds necessary to carry out this chapter." (Emphasis added.) The remainder of R.C. 4927.03(E) required the Commission to complete the rulemaking required by Sub. S.B. 162 within 120 days of the effective date of the legislation; the Commission did so, in the October 27, 2010 Opinion and Order in this proceeding. Thus the General Assembly imposed no time constraint on the Commission's authority to adopt detariffing rules.

The Commission was not required by the statute to adopt such rules. But under the circumstances outlined in this application for rehearing, it was unjust and unreasonable for the Commission not to engage in a rulemaking "regarding the removal from tariffs of services that were required to be filed in tariffs prior to the effective date" of the statute.

D. The Commission Failed To Require The Filing Of Adequate Information With LEC And CETC Certification Applications.

- The Commission erred, and the January 19 Entry was unjust and unreasonable, in failing to require adequate filings in LEC and CETC certification proceedings.

In the comments on the draft 10-1010 rules, OPTC made proposals for the process for LEC certification. These included, for proposed Rule 8(E)(8), a requirement for applicants to provide information regarding any formal complaints or adjudications against them in other states.[38] As OPTC stated, "This information is essential to determining whether the applicant has the managerial and/or technical expertise to provide service in the public convenience in Ohio."[39]

Similarly, with regard to CETCs, OPTC proposed that the ETC designation rule should require applicants that have operations in other states to provide information regarding any formal complaints or adjudications against them in those states.[40] OPTC also noted the importance of this information.[41]

In the 10-1010 Opinion and Order, the Commission stated that, with regard to LEC certification, "[T]he requirement suggested by OPTC for applicants to provide information regarding formal complaints and adjudications against them in other states is a good suggestion, but one more appropriately addressed in the telecommunications filing form, rather than the rule."[42] Likewise, with regard to CETC certification, the Commission stated that, although it "agree[d] with several of the [OPTC] recommendations, we believe that it is more appropriate to leave such detail to the

[38] OPTC Comments (August 30, 2010) at 16.

[39] Id.

[40] Id. at 17.

[41] Id. at 17-18.

[42] Opinion and Order at 13.

telecommunications filing form and to future Commission procedural entries, as opposed to the rule."[43]

Despite these statements, the "Telecommunications Supplemental Application Form for Carrier Certification" attached to the January 19 Entry requires the filing only of "[i]nformation regarding any similar operations in other states," and makes no mention of complaints. And the "Telecommunications Supplemental Application Form for Competitive Eligible Telecommunications Carrier Designation Low-Income Universal Service" makes no mention of operations in other states at all, much less of complaints against the carriers.[44]

The Commission has not explained its change in direction here. In order to protect Ohio customers from telephone companies with questionable operations in other states, the Commission should follow through with the findings in the Opinion and Order on these matters, by incorporating the language recommended by OPTC that would require applicants to disclose formal complaints filed against them in other states.

IV. CONCLUSION

For the reasons stated herein, the Commission should grant this application for rehearing and abrogate the Order in the respects identified herein.

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[43] Id. at 14.

[44] The same problem exists with the "Telecommunications Supplemental Application Form for Competitive Eligible Telecommunications Carrier Designation High-Cost Universal Service."

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Application for Rehearing by the Members of Ohioans Protecting Telephone Consumers* was served via electronic mail, upon the persons listed below, on this 18th day of February 2011.

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