

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

THIRD ENTRY ON REHEARING

The Commission finds:

- (1) On October 27, 2010, the Commission issued an opinion and order, *inter alia*, that rescinded Chapters 4901:1-4, Ohio Administrative Code (O.A.C.) (alternative regulation for incumbent local exchange carriers), 4901:1-5, O.A.C. (furnishing of intrastate telecommunications service by local exchange carriers), and existing Chapter 4901:1-6, O.A.C. (retail telecommunication services) and adopted new rules as set forth in Appendix A of the opinion and order in accordance with Substitute Senate Bill 162 (S.B. 162), that became effective on September 13, 2010. On December 15, 2010, the Commission issued a second entry on rehearing denying the applications seeking rehearing of the October 27, 2010, opinion and order.
- (2) On January 19, 2011, the Commission issued an entry, *inter alia*, that announced the effective date of newly adopted telephone rules in Chapter 4901:1-6, O.A.C.; set forth a process for telephone companies to file tariffs implementing Chapter 4901:1-6, O.A.C.; and directed the affected telephone companies to provide one-time customer notice of these tariff changes.
- (3) An application seeking rehearing of the January 19, 2011, entry was filed by the Office of the Ohio Consumers, Communities United for Action, Edgemont Neighborhood Coalition, Ohio Poverty Law Center, and Pro Seniors, Inc. (collectively, OPTC) on February 18, 2011.
- (4) Memoranda contra OPTC's application for rehearing were filed by the Ohio Telecom Association and the AT&T Entities on February 28, 2011.
- (5) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

- (6) OPTC's first assignment of error argues that the customer notice of detariffing fails to adequately and accurately inform customers about the changes in their services that result from detariffing. OPTC submits that the description in the customer notice does not adequately inform customers that their telephone service in most instances will now be covered by customer agreements or that the new law still contains protections for all telephone services that are to be enforced by the Commission. Equally important, claims OPTC, is that the Commission did not direct its staff to include a section on the Commission's website informing residential customers of the ramifications regarding the detariffing of most services.
- (7) OPTC's first assignment of error is denied. Nothing in S.B. 162 suggests that a Commission-prescribed customer notice becomes a "communication" that must fulfill the requirements of Section 4927.06(A)(1), Revised Code. Nevertheless, even if that statute does apply in this instance, and contrary to OPTC's allegations of error, we determine that the residential customer notice template appended to the January 19, 2011, implementation entry adequately and accurately informs customers of the changes resulting from detariffing. The residential customer notice template informs customers that, beginning on a date certain, the prices and service descriptions as well as the terms and conditions of service for all service offerings except flat rate local service will no longer be on file at the Commission but rather will be the subject of agreements between the customer and the company. The notice further advises customers that they should carefully review and confirm the price, terms, and conditions of service. Additionally, the notice specifies that this detariffing does not, in and of itself, result in a change in the prices, terms, or conditions of those detariffed services but rather that such future changes will be proceeded by customer notice before any changes take place. Finally, the template notice lists a toll-free number and a URL website for both the company and the Commission where customers can call with questions or for further information. Thus, we believe the customer notice template provides the customer with a clear and accurate description of the impact that detariffing will have on the customer. (See Rule 4901:1-6-07(D), O.A.C.)

- (8) OPTC next alleges that the Commission erred by failing to adopt a process for accomplishing detariffing that will adequately protect customers. For example, OPTC submits that the Commission must ensure that the telephone companies actually have written agreements in place with each of their customers and that, upfront, these written agreements do not contain provisions that violate the new law. Such key issues needing identification for consumers include, at a minimum according to OPTC, early termination fees, mandatory arbitration clauses, and procedures involving telephone complaints under the new law. OPTC also urges the Commission to consult with other state and federal authorities on their experiences regarding detariffing.
- (9) OPTC's second assignment of error is likewise denied. OPTC's recommendation that the Commission must ensure that every telephone company actually have written agreements with each of their customers before detariffing occurs would ensure that detariffing never takes place due to the competitive opportunities available to customers to switch service among various telephone company providers at will. Similarly, it is not necessary to examine every telephone company's written agreement in order to ensure that OPTC's key issues are identified for customers because such issues would represent a change in the terms and conditions of service and thus would have to be noticed in advance to customers before being included in such written agreements. A customer would, therefore, have advance notice of and opportunity to consider whether to agree to the new term or condition. Of course, the failure of a telephone company to provide prior written notice of such a new term or condition would result in a violation of both Section 4927.06, Revised Code, and Rule 4901:1-6-16, O.A.C. As a final matter on this assignment of error, we do not find it necessary to consult with other state and federal authorities on detariffing as the Commission has had its own successful detariffing experience with virtually all business access lines as well as all residential and business toll services offerings in 2007.
- (10) OPTC's third assignment of error claims that the Commission erred by not engaging in a rulemaking proceeding, as statutorily authorized, in order to accomplish detariffing.

- (11) Contrary to the OPTC's position, the Commission did, in fact, consider and adopt a rule on tariffing. Specifically, Rule 4901:1-6-11, O.A.C., addresses issues involving the services required to be tariffed, tariffing requirements, and tariff filing dockets. To the extent that there were other tariffing issues that the OPTC desired the Commission to address, the rulemaking proceeding that resulted in the adoption of Rule 4901:1-6-11, O.A.C., would have been the appropriate docket for OPTC to raise those issues. OPTC's assignment of error on this issue is, therefore, denied.
- (12) In its last assignment of error, OPTC argues that the Commission erred by failing to require adequate information to be included in certification proceedings filed by local exchange carriers (LECs) and competitive eligible telecommunication carriers (CETCs) under the new rules. OPTC notes that, in the October 27, 2010, opinion and order, the Commission appeared to agree with OPTC's position that additional information may be necessary to establish the managerial and/or technical expertise of an applicant seeking to provide service in Ohio. OPTC was expecting such additional information to be highlighted in the telecommunications filing form that accompanies all certification applications. Such information is necessary, according to OPTC, in order to protect Ohio consumers from telephone companies with questionable operations in other states.
- (13) Rehearing on OPTC's last assignment of error is denied. Initially, the Commission notes that OPTC raised a similar argument in its November 26, 2010, application for rehearing, which the Commission denied in the December 15, 2010, second entry on rehearing in this docket. Notwithstanding the procedural aspects of this argument, the Commission notes that we have repeatedly stated that the more appropriate place to consider issues involving the managerial and the technical capabilities of an applicant is in the telecommunications filing form and in future procedural entries as opposed to in a rule. Although the Commission did not find it necessary to attempt to include an exhaustive list of requirements either in the adopted rule or in the telecommunications filing form, the Commission's staff still has the investigatory tools necessary to evaluate circumstances involving complaints arising in other jurisdictions involving a CETC or LEC applicant. Such tools

include a procedural entry or staff data request. Rehearing on this assignment of error is, therefore, denied.

It is, therefore,

ORDERED, That OPTC's application for rehearing filed on February 18, 2011, be denied as discussed herein. It is, further,

ORDERED, That a copy of this third entry on rehearing be served upon all interested persons of record in this matter.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman  
Paul A. Centolella  
Valerie A. Lemmie  
Steven D. Lesser  
Cheryl L. Roberto

JRJ/vrm

Entered in the Journal

**MAR 15 2011**



Renee J. Jenkins  
Secretary