

In the Matter of the Commission's)
Investigation into Intrastate Carrier Access) Case No. 10-2387-TP-COI
Reform Pursuant to S.B. 162.)

The Office of the Ohio Consumers' Counsel ("OCC") moves the Public Utilities Commission of Ohio ("Commission" or "PUCO") for an order extending the procedural schedule in this case where the rates that residential customers pay for telephone service are at risk for increases.¹ The discovery cut-off date was May 31, 2011, and initial and reply supplemental comments are due July 1 and July 15, 2011 respectively. OCC moves that the discovery cut-off be extended to June 24, 2011, which will be twenty-one (21) days after OCC received the data filed under seal in this case by the members of the Small Local Exchange Carrier ("SLEC") Group,² and Windstream Ohio, Inc. and

2 The SLEC Group, all represented by counsel at a single law firm, are the following: Arcadia Telephone Company, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, Benton Ridge Telephone Company, Buckland Telephone Company, Champaign Telephone Company, Chillicothe Telephone, Columbus Grove Telephone Company, Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Germantown Independent Telephone Company, Glandorf Telephone Company, Kalida Telephone Company, Inc., Little Miami Communications Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, New Knoxville Telephone Company, Nova Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, Ottoville Mutual Telephone Company, Pattersonville Telephone Company, Ridgeville Telephone Company, Sherwood Mutual Telephone Association, Sycamore Telephone Company, Telephone Service Company, Vanlue Telephone Company, Vaughnsville Company, and Wabash Mutual Telephone.

Windstream Western Reserve, Inc. (collectively, “Windstream”). The comment date would then be July 25, 2011, thirty (30) days after the cut-off date, and the reply comments would be due August 8, 2011, fourteen (14) days later. These extensions are consistent with the original discovery cut-off and comment due dates established in this proceeding, and consistent with the previous extensions granted to other parties.

In this case, the Commission is investigating the access charges that carriers pay to Ohio local exchange carriers (“LECs”) for intrastate long distance traffic, purportedly pursuant to recently-adopted R.C. 4927.15(B) and (C).³ These access charges add to the revenues of LECs, and add to the costs of long-distance carriers. The Commission asked for comment on a proposal by PUCO staff that would a) reduce the eligible carriers’ intrastate access charges to no more than their interstate access charges; and b) allow those carriers to recoup the revenues lost from these access charge reductions through an intrastate Access Recovery Fund (“ARF”).⁴ The staff proposal, for the first time, would allow Ohio ILECs to recover lost revenues from other Ohio carriers and, presumably, from the other carriers’ customers. Thus the information that was filed under seal, and to which OCC only recently gained access for the majority of the eligible carriers, goes to the very heart of this case.

As the sole governmental agency – and the sole representative of customers – that has intervened in this case, OCC has been negotiating protective agreements with the SLEC Group and with Windstream since the issuance of the February 23 Entry. But those negotiations came to a conclusion only on June 3, 2011, when OCC received the

³ Entry (November 3, 2010) (“November 3 Entry”) at 1-2.

⁴ The plan was set forth in Appendix A of the November 3 Entry; the questions posed for response were set forth in Appendix B of the November 3 Entry.

information from the members of the SLEC Group and the two Windstream companies. OCC previously entered into protective agreements with CenturyLink and with Frontier, allowing access to material filed under seal for CenturyTel of Ohio d/b/a CenturyLink and Frontier of Michigan.⁵

This motion for extension of the procedural schedule includes a request for an expedited ruling. Given the numerousness of the parties that have participated in some fashion in this proceeding, OCC is unable to certify that no party objects to the extension requested here. OCC did attempt to contact those counsel on the service list for pleadings. Counsel for OCTA and Verizon responded that they did not object to an expedited ruling on OCC's motion. Counsel for Cincinnati Bell indicated no objection to OCC's motion, as did counsel for OCTA. Counsel for Sprint indicated no objection. Counsel for the SLEC Group objected to the issuance of a ruling on OCC's motion without the opportunity to file a memorandum contra the motion. OCC was the recipient of informal information from AT&T (not by counsel) that AT&T does object to OCC's motion, but as of the time of this filing OCC has not received a reply from AT&T counsel.

The grounds for this motion are more fully set forth in the accompanying Memorandum in Support. The motion should be granted for good cause shown.⁶

⁵ These agreements also give OCC access to overall intrastate revenue information for United Telephone Company of Ohio d/b/a CenturyLink and Frontier North, Inc. as contributing carriers.

⁶ Ohio Adm. Code 4901-1-13(A).

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ David C. Bergmann

David C. Bergmann, Counsel of Record
Terry L. Etter
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
bergmann@occ.state.oh.us
etter@occ.state.oh.us

In the Matter of the Commission's)
Investigation into Intrastate Carrier Access) Case No. 10-2387-TP-COI
Reform Pursuant to S.B. 162.)

⁷ Motion to Intervene and Motion for Hearing and Other Procedural Orders by the Office of the Ohio Consumers' Counsel (November 9, 2010) ("OCC Initial Motions").

Importantly, OCC also asserted that the parties and the Commission need access to key data in order to inform the Commission here for purposes of its decision-making under R.C. 4903.09. The November 3 Entry included, in addition to topics for comment, data requests to be completed by “eligible carriers,” those that would have their intrastate access charges reduced, and would have their revenues replaced.⁸ OCC moved the Commission to require that the data the PUCO staff proposed to be submitted **after** the plan was approved, be filed **before** the comments.⁹

On February 23, 2011, after the initial comments and reply comments were filed, the Commission issued an Entry that

direct[ed] all eligible ILECs, as defined by the proposed plan, to file on or before March 18, 2011, their respective data for the 2009 and 2010 calendar years in response to Appendix C of the Commission’s Entry of November 3, 2010. The eligible ILECs should also file, on or before March 18, 2011, their responses to the questions set forth in the attachment to today’s entry. Additionally, all contributing carriers, as defined by the proposed plan, are directed to file their respective data in response to Appendix D of the Entry of November 3, 2010, on or before March 18, 2011.¹⁰

The February 23 Entry also invited ILECs to file motions for protective order regarding any information required to be filed that they considered confidential. Finally, the February 23 Entry allowed supplemental comments to be filed on May 20, 2011 (thirty-three days after the discovery cut-off), with supplemental reply comments to be filed on June 3, 2011 (fourteen days later).¹¹

⁸ November 3 Entry, Appendix C. The “eligible carriers” were subsequently identified as all small ILECs – the members of the SLEC Group and Frontier Communications of Michigan – as well as both Windstream companies and CenturyTel of Ohio, Inc. dba CenturyLink. Entry (December 8, 2010) (“December 8 Entry”), n.1. The November 3 Entry also included a data request for “contributing carriers,” those that would be contributing to the ARF. November 3 Entry, Appendix D.

⁹ OCC Initial Motions at 8-9.

¹⁰ Entry (February 23, 2011) (“February 23 Entry”) at 3-4.

¹¹ Id.

On or about March 18, 2011, all the eligible carriers and many contributing carriers made filings pursuant to the February 23 Entry. All the eligible carriers filed motions for protective order¹²; some of the contributing carriers filed motions for protective order.¹³

OCC was able to obtain the data filed by thirty-four (34) of the thirty-six (36) eligible carriers – all of the SLEC Group, and the two Windstream companies only on June 3, 2011.¹⁴ Prior to obtaining that data, it appeared that, at least from OCC's perspective, responding to the Commission's invitation to file supplemental comments "based on ... review of the submitted data..."¹⁵ would have been a fundamentally futile act.

Earlier in this proceeding,

[o]n April 14, 2011, the Ohio Cable Telecommunications Association; tw telecom of Ohio, LLC; Verizon Entities, T-Mobile Central LLC; and VoiceStream Pittsburgh, LP (collectively, movants), jointly filed a motion seeking an extension of the discovery period originally set to expire on April 18, 2011, pursuant to the Commission's Entry of February 23, 2011. Specifically, movants request an extension for discovery requests until May 31, 2011. Related to the request for the extension of discovery, movants request that the previously established deadlines for the filing of supplemental comments and supplemental reply comments be extended until July 1, 2011, and July 15, 2011, respectively.

In support of their motion, movants explain that discovery efforts have been hindered due to issues pertaining to confidentiality concerns. Specifically, movants assert that until the discovery issues are resolved, it is not possible to determine whether additional discovery is necessary. Movants believe that the Commission should ensure sufficient time for

¹² The SLEC Group filed a joint motion for protective order.

¹³ On April 1, 2011, OCC filed a combined memorandum contra the motions for protective order; that memorandum contra sets forth the details of the various motions. The Commission has not yet ruled on the motions for protective order.

¹⁴ Conversely, OCC earlier had access only to the data filed by CenturyTel and Frontier of Michigan.

¹⁵ February 23 Entry at 4.

those affected by the proposed plan to obtain the information necessary to evaluate the proposed plan and/or suggest a different plan.¹⁶

The requested extension was granted, with the discovery cut-off date extended by forty-three days to May 31, 2011, and initial and reply supplemental comments being due July 1 (thirty-one days after the cutoff) and July 15, 2011 (fourteen days later) respectively.¹⁷

Similarly, OCC's efforts at getting access to the data were "been hindered due to issues pertaining to confidentiality concerns."¹⁸ As time passed, OCC's efforts were focused simply on getting access to the data filed under seal at the Commission.¹⁹

Based on the foregoing, OCC must itself request an extension of the schedule for the proceeding. OCC moves that the discovery cut-off be extended to June 24, 2011, which will be twenty-one (21) days after OCC received the last of the data filed under seal in this case by the members of the SLEC Group, and the Windstream companies. The comment date would then be July 25, 2011, thirty (30) days after the cut-off date, and the reply comments would be due August 8, 2011, fourteen (14) days later.

Ohio Adm. Code 4901-1-13(A) provides that "extensions of time to file pleadings or other papers may be granted upon motion of any party for good cause shown...." Given the fundamental importance of the information in question to this proceeding, OCC clearly has shown good cause for an extension, as did the April 14, 2011 movants for the extension they requested. Also, R.C. 4903.082's provision for "ample" discovery

¹⁶ Entry (April 15, 2011) ("April 15 Entry") at 1.

¹⁷ Id. at 1-2.

¹⁸ See Entry (March 23, 2011) ("March 23 Entry") at 2, and Entry (April 20, 2011) ("April 20 Entry") at 2.

¹⁹ OCC's efforts at discovery beyond access to the filed data have basically been rebuffed, principally due to objections concerning the Commission's statement that discovery is permitted only "on the submitted data." February 23 Entry at 4.

and Ohio Adm. Code's provision for "thorough and adequate preparation for participation in commission proceedings" support the extension requested here.

II. REQUEST FOR EXPEDITED RULING

On February 23, when the Commission first ordered information to be filed, and allowed it to be filed subject to motions for protective order, that definitely triggered the need for a protective agreement – before then there was no data to be filed. At that point, the Commission allowed almost two months between the filing of the data and the due date for supplemental comments.

OCC reasonably attempted to work out protective agreements with all of the eligible carriers; as also discussed herein, however, those efforts only recently were successful with all of the eligible carriers. OCC welcomed the April 15 extension of the comment due date based on other parties' lack of access to the information. The extension granted an additional six weeks for the comment due date. Again, OCC anticipated that protective agreements would be able to be reached.

As of the date that this motion is filed, there remain only twenty-three (23) days until the supplemental comments are due. Therefore, an expedited ruling is necessary.

Therefore, OCC respectfully requests an expedited ruling on this motion, pursuant to Ohio Adm. Code 4901-1-12(C). Given the numerousness of the parties participating in some way in this proceeding, OCC has not attempted to contact them all. As discussed in the Motion above, OCC did attempt to contact those on the service list for pleadings, and got varied responses.

III. CONCLUSION

The issues affecting customers in this case are complex and could lead to increases in customers' bills. OCC should have ample opportunity, under R.C. 4903.082 and PUCO rules, to investigate those issues based on the information filed with the Commission. The inability to enter into a reasonable protective agreement with all of the eligible carriers until recently has severely handicapped that investigation and OCC's ability to advocate for Ohioans. Access to the information filed under seal is vital for informed comment on the PUCO staff's proposal. The Commission should grant OCC's motion for an extension of the procedural schedule.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER
CONSUMERS' COUNSEL

/s/ David C. Bergmann

David C. Bergmann, Counsel of Record
Terry L. Etter
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-8574 (Telephone)
bergmann@occ.state.oh.us
etter@occ.state.oh.us

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Motion by the Office of the Ohio Consumers' Counsel and Request for Expedited Ruling*, was served via electronic mail this 8th day of June, 2011.

/s/ David C. Bergmann

David C. Bergmann
Assistant Consumers' Counsel

SERVICE LIST

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
william.wright@puc.state.oh.us

Norman J. Kennard
Regina L. Matz
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, Pennsylvania 17108-9500
nkennard@thomaslonglaw.com
rmatz@thomaslonglaw.com

Attorneys for the Small Local Exchange Carriers

Kevin J. Saville
Frontier Communications Corporation
2378 Wilshire Blvd.
Mound, Minnesota 55364
kevin.saville@FTR.com

William A. Adams, Counsel of Record
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215-3422
william.adams@baileycavalieri.com

*Attorney for Frontier North Inc. and
Frontier Communications of Michigan*

*Attorney for Windstream Ohio, Inc., and
Windstream Western Reserve, Inc.*

Rachel G. Winder
Ohio Government and Regulatory Affairs
Frontier Communications
17 South High Street, Suite 610
Columbus, Ohio 43215
rachel.winder@ftr.com

Benita Kahn
Stephen M. Howard
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
bakahn@vorys.com
smhoward@vorys.com

*Attorneys for Comcast Phone
of Ohio, LLC, PAETEC and Time Warner
Cable Information Services (Ohio), LLC*

Diane C. Browning
Counsel, State Regulatory
6450 Sprint Parkway
Mailstop: KSOPHN 0314-3A459
Overland Park, Kansas 66251
diane.c.browning@sprint.com

Attorney for Sprint Nextel

Thomas J. O'Brien
Bricker & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215
tobrien@bricker.com
*Attorney for the MACC Coalition and
Nexus Communications Inc.*

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, Ohio 45202
dhart@douglasshart.com

*Attorney for Cincinnati Bell Telephone
Company LLC, Cincinnati Bell Extended
Territories LLC, Cincinnati Bell Wireless,
LLC and Cincinnati Bell Any Distance Inc.*

Zsuzsanna E. Benedek
CenturyLink
240 North Third Street, Suite 300
Harrisburg, PA 17101
sue.benedek@centurylink.com

Attorneys for CenturyLink

Gary Baki
50 West Broad Street, Suite 3600
Columbus, Ohio 43215
gary.s.baki@centurylink.com

Mary Ryan Fenlon
Jon F. Kelly
150 East Gay Street, Room 4-A
Columbus, Ohio 43215
mf1842@att.com
jk2961@att.com

Attorneys for AT&T Entities

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

David Haga
Verizon
1320 North Courthouse Road
Arlington, Virginia 22201
david.haga@verizon.com

*Attorneys for MCI metro Access
Transmission Services LLC d/b/a Verizon
Access Transmission Services, MCI
Communications Services, Inc. d/b/a
Verizon Business Services, and Cellco
Partnership and its subsidiaries,
collectively d/b/a Verizon Wireless*

Sandi Murphy
First Telecom Services, LLC
3340 West Market Street
Akron, Ohio 44333
smurphy@firstcomm.com

Attorney for First Communications, Inc.

Garnet Hanly
Senior Corporate Counsel
401 Ninth Street, NW, Suite 530
Washington, D.C. 20004
garnet.hanly@t-mobile.com

*Attorney for T-Mobile Central, LLC and
VoiceStream Pittsburgh, L.P. ("T-Mobile")*

D. Anthony Mastando
Vice President, Regulatory Affairs
7037 Old Madison Pike
Huntsville, AL 35806
tony.mastando@corp.earthlink.com

*Attorney for Business Telecom, Inc. and
DeltaCom, Inc.*

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/8/2011 4:21:31 PM

in

Case No(s). 10-2387-TP-COI

Summary: Motion Motion for Extension of Procedural Schedule and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel electronically filed by Mary Edwards on behalf of BERGMANN, DAVID C. and Office of the Ohio Consumers' Counsel