

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Filing of Annual)	
Reports for Calendar Year 2011 by:)	
Electric Distribution Utility Companies)	Case No. 12-01-EL-RPT
Natural Gas Distribution and Pipeline)	Case No. 12-02-GA-RPT
Companies)	
Certified Competitive Retail Electric Service)	Case No. 12-03-GE-RPT
Providers, Natural Gas Suppliers, and)	
Governmental Aggregators)	
Regulated Heating and Cooling Companies)	Case No. 12-04-HC-RPT
Competitive and Wireless Telecommunica-)	Case No. 12-05-TP-RPT
tions Service Providers)	
Incumbent Local Exchange Carrier)	Case No. 12-06-TP-RPT
Telephone Service Providers)	
Waterworks and Sewage Disposal)	Case No. 12-07-TP-RPT
Companies)	
Intrastate Railroads)	Case No. 12-08-WS-RPT
Regulated Toll Bridge and Water)	
Transportation Companies)	Case No. 12-09-AU-RPT

FINDING AND ORDER

The Commission finds:

- (1) Section 4905.14, Revised Code, requires that every public utility, as defined by Sections 4905.02 and 4905.03, Revised Code, shall file an annual report at the time and in the form prescribed by the Commission. Section 4907.20, Revised Code, requires all intrastate railroad companies, including bridge and water transportation companies engaged in the conveyance of persons or property within this state as defined in Section 4907.02, Revised Code, to complete forms as directed by the Commission. Section 4928.06, Revised Code, requires every certified competitive retail electric service provider and governmental aggregator subject to certification under Section 4928.08, Revised Code, to file an annual report of sales and receipts for those services for which it is subject to certification. Section 4929.23, Revised Code, requires every retail natural gas supplier and governmental aggregator subject to certification under Section 4929.20, Revised Code, to file an annual report of sales and receipts for those services for which it is subject to

certification. Section 4905.54, Revised Code, empowers the Commission to assess a forfeiture of not more than \$10,000 per day for each violation or failure of a public utility or railroad, or an officer of a public utility or railroad, to comply with an order, direction, or requirement of the Commission made under authority of Chapter 4905, Revised Code.

- (2) On February 14, 2012, the Commission issued an entry in each of the above-captioned cases directing the filing of reports by April 30, 2012, in accordance with the sample or on-line form and instructions posted on the Commission's website. Each reporting entity was directed to file an annual report with the Commission even if the company was not in business or did not have intrastate gross earnings during calendar year 2011. Furthermore, entities were apprised that failure to file an annual or assessment report might result in revocation of a company's operating authority or certificate; and that any public utility's failure to comply may result in the assessment of penalties pursuant to Section 4905.54, Revised Code. Finally, all reporting companies were advised that the Commission will implement a \$100 minimum assessment per reporting entity pursuant to Section 4905.10(A), Revised Code, for all reporting entities, including brokers and governmental aggregators who have no intrastate gross revenues.
- (3) On March 15, 2012, the Ohio Telecom Association (OTA) filed a motion to intervene and application for rehearing of the February 14, 2012, entry in Case No. 12-05-TP-RPT, asserting that the entry was unlawful and unreasonable because it failed to provide for the protection of confidential information contained in the annual reports filed by competitive wireless and telecommunication service providers under Section 4905.14(A)(2)(a), Revised Code, and in keeping with the Commission's own precedent established under *In re Implementation of Section 749.10 of Amended Substitute House Bill 153*, Case No. 11-5384-AU-UNC, Finding and Order, (December 14, 2011) ("OCC Assessment Case").
- (4) On April 11, 2012, the Commission issued an entry on rehearing in Case No. 12-05-TP-RPT granting OTA's motion to intervene and its application for rehearing to allow further time to consider the matters specified therein.

- (5) On May 23, 2012, the Commission issued a second entry on rehearing in Case No. 12-05-TP-RPT denying OTA's application for rehearing. The Commission noted that Senate Bill 162 of the 128th General Assembly, effective September 13, 2010, amended Section 4905.14, Revised Code, to, *inter alia*, add a new subsection (A)(2), which now reads as follows:
- (a) Except as provided in division (A)(2)(b) of this section, in the case of a telephone company, including a wireless service provider, the annual report shall be limited to information necessary for the commission to calculate the assessment provided for in section 4905.10 of the Revised Code. The commission shall protect any confidential information in every company and provider report.
 - (b) With respect to a telephone company subject to section 4905.71 of the Revised Code, the commission shall adopt rules that require such a telephone company to also include in the annual report information required by the commission to calculate pole attachment and conduit occupancy rates and any other information the commission determines necessary and requires by rule for the commission to fulfill its responsibility under section 4905.71 of the Revised Code.
- (6) In applying this new statutory provision, we rejected OTA's argument that the new provision requires the Commission to keep wireless service provider annual reports confidential, notwithstanding our discussion of this provision in the December 14, 2011, Finding and Order in the OCC Assessment Case, at 21. The Commission noted that in past years, wireless service providers were permitted to submit assessment reports which, while not treated as filed under seal in the same manner as confidential materials protected under Rule 4901-1-24, Ohio Administrative Code (O.A.C.), the reports were not docketed in any case or made publicly accessible on the Commission's website. Moreover, we noted that the only information for which OTA sought protection in the OCC Assessment Case was the wireless service provider's intrastate revenue. The Commission also opined that a wireless service provider's

disclosure of its intrastate revenue within Ohio for the previous calendar year did not merit the protection of confidential information referenced in Section 4905.14(A)(2)(a), Revised Code. However, given the Commission's past practice, we granted any wireless service provider 30 days to file a motion for protective order to identify all confidential information contained in its report, and present arguments as to why such information should not be publicly disclosed.

- (7) On June 11, 2012, T-Mobile Central, LLC and Voice Stream Pittsburgh, Limited Partnership (T-Mobile) filed a joint motion for protective order arguing that its Ohio intrastate revenue is a trade secret under Section 1333.61(D), Revised Code. T-Mobile asserts that it maintains internal procedures to prevent disclosure of its intrastate revenues which are not generally available to the public, nor generally known outside the company, and typically are only made available to employees on a need-to-know basis. T-Mobile also states that disclosure of its intrastate revenues would give competitors a competitive advantage by providing an indicia of T-Mobile's business performance for a given year and for measuring performance relative to prior years and relative to competitors. T-Mobile asserts that such disclosure would harm T-Mobile's competitive position since competitors would be unable to develop this information on their own, without expending a significant amount of resources. Finally, T-Mobile argues that public disclosure of its intrastate revenues is not likely to assist the Commission in carrying out its duties under rules, especially since the Commission Staff has access to the information should it be needed to serve any other public policy.
- (8) By entry issued on June 13, 2012, each reporting entity that had not yet filed its annual report or requested a waiver, was directed to do so no later than June 25, 2012. The entry also advised reporting entities that failure to file might result in the revocation of the entity's operating authority and the assessment of a forfeiture, pursuant to Section 4905.54, Revised Code.
- (9) On June 19, 2012, New Cingular Wireless PCS LLC and Cincinnati SMTA Limited Partnership (collectively, AT&T) and New Par, Cellco Partnership, Springfield Cellular Telephone

Company, GTE Wireless of the Midwest Incorporated, Alltel Communications, LLC and Alltel Communications of Petersburg, Inc. (collectively, Verizon), filed a motion for protective order against disclosure of their intrastate revenues. AT&T and Verizon assert many of the same arguments as made by T-Mobile discussed above. In addition, they submitted affidavits from their respective corporate officers stating that they consider their intrastate revenues to be confidential, that these numbers are not publicly available, and that the companies take efforts to prevent such disclosure.

- (10) With respect to the motions of T-Mobile, and AT&T and Verizon, for protective orders against disclosure of their intrastate gross revenues, we find that the annual Ohio intrastate revenues of these parties do not constitute trade secrets under Section 1333.61(D), Revised Code. These wireless service providers have failed to present any credible evidence of the harm or competitive disadvantage such disclosure would create. We first note that all wireless service providers would be required to publicly disclose their annual intrastate gross revenues, and we find no evidence that such disclosure would inherently benefit one provider at the expense of another. Moreover, these parties have failed to identify any reasons why the intrastate gross revenues of wireless service providers should not be publicly available when all other competitive telephone service providers, as well as competitive certified suppliers in the electric and gas industries, are required to publicly report their intrastate gross revenues. Accordingly, the motions of T-Mobile, and AT&T and Verizon for protective orders will be denied.
- (11) By entry issued on August 8, 2012, in Case Nos. 12-03-GE-RPT through 12-05-TP-RPT, and 12-07-WS-RPT through 12-09-AU-RPT, each reporting entity that had not yet filed its annual report was granted until August 20, 2012, to show cause why its certification or operating authority should not be revoked, or assessed a forfeiture of not more than \$10,000 per day for failure to comply with the Commission's February 14, 2012, and June 13, 2012, Orders. Furthermore, a copy of the entry was served upon each listed delinquent entity by both regular and certified mail, in addition to any service via electronic mail.

- (12) Attachment A to this order lists each reporting entity that has failed to file an annual report for 2011. The certificate or operating authority of each listed entity is hereby revoked. Each company listed on Attachment A must now immediately cease providing regulated service in the state of Ohio, and notify any Ohio jurisdictional customers that it is no longer operating in Ohio. Any company that continues to provide regulated service after the cancellation of its certificate and tariff may be subject to a more severe penalty. The Commission's Docketing Division should issue notice of such revocation of its certificate or operating authority to each company listed on Attachment A to this order, cancel all applicable tariffs, and remove each listed entity from the Commission's regulated company list. Further, any listed entity seeking to restore its certification or operating authority, or obtain new authority from this Commission, may be assessed a forfeiture of \$100.00, pursuant to Section 4905.54, Revised Code.
- (13) Attachment B to this order lists each reporting entity that has failed to pay its assessment for 2012. The Commission's records reflect that invoices were sent to all reporting entities on September 26, 2012, and were due on October 24, 2012. Past due invoices were sent to all delinquent companies on November 5, 2012. Each company listed on Attachment B is hereby granted until December 31, 2012, to show cause why its certificate or operating authority should not be revoked for failure to pay the assessed amount.
- (14) Finally, the Commission notes that Staff intends to implement a simplified, uniform report form and process across all industry segments for the 2012 reporting year. Further information, including sample forms, will be made available as soon as possible through the industry listserves. All reporting entities are directed to subscribe to the appropriate industry list(s) or contact the Docketing Division at (614) 466-4095.

It is, therefore,

ORDERED, That the motions of T-Mobile, and AT&T and Verizon for protective orders are denied. It is, further,

ORDERED, That the certificate or operating authority for each company listed on Attachment A to this order be revoked. It is, further,

ORDERED, That each company listed on Attachment A to this order immediately cease providing regulated service in the state of Ohio, and notify all Ohio jurisdictional customers, if any, that it is no longer operating in Ohio. It is, further,

ORDERED, That the Commission's Docketing Division cancel the certificate or operating authority and any tariffs for each entity listed on Attachment A to this order, issue notice of revocation of the certificate or operating authority for such entity, and remove such entity from the Commission's regulated company list. It is, further,

ORDERED, That each company listed on Attachment B pay the amount assessed, or show cause why its certificate or operating authority should not be revoked, by December 31, 2012. It is, further,

ORDERED, That notice of this order be served via the Electric-Energy, Gas-Pipeline, Railroad, Telephone, and Water industry listserves, and upon all parties of record; and that, in addition to any electronic service, a copy of this order be served by regular and certified mail upon all entities on the attached lists.

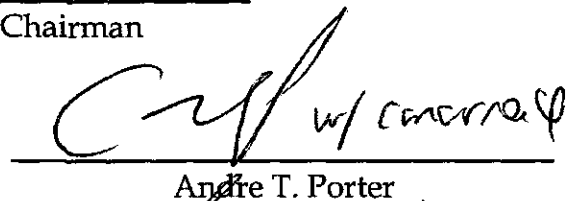
THE PUBLIC UTILITIES COMMISSION OF OHIO



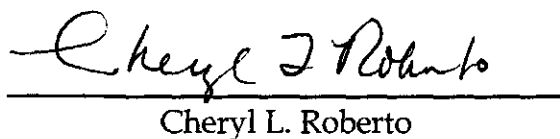
Todd A. Snitchler, Chairman



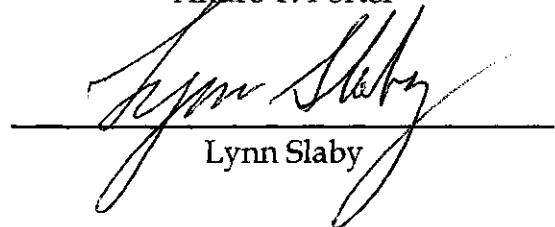
Steven D. Lesser



Andre T. Porter



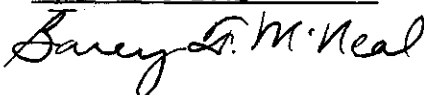
Cheryl L. Roberto



Lynn Slaby

RMB/vrm
Entered in the Journal

DEC 19 2012



Barcy F. McNeal

Barcy F. McNeal
Secretary

Attachment A
Regulated Entities failing to file Annual Reports for 2011

12-01-EL-RPT, et al.

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Case No. 12-03-GE-RPT:			
Company Name(s)	Certificate	Address	City, State Zip
1. City of Canton	12-430E	218 Cleveland Ave SW, PO Box 24218	Canton, OH 44701
2. Dynamic Energy LLC	11-406E	8251 Arbor Square Dr, #122	Mason, OH 45040
3. GearyEnergy, LLC	10-309E	7712 S Yale Ave, Ste 201	Tulsa, OK 74136
4. J. Andrew Associates, Inc. , dba Seven-Utility Management Consulting, LLC	10-226E	19840 Cypress Church Rd	Cypress, TX 77433
5. Maneri-Agraz LLC	11-412E	1620 W Sam Houston Pkwy N	Houston, TX 77043
6. Optimum Group LLC	11-356E	34 Ellis Ct	Morganville, NJ 07751
7. Peoples Power & Gas LLC	11-378E	1217 E Cap Coral Pkwy, Ste 220	Cape Coral, FL 33904
8. Sustainable Star LLC	11-358E	3060 Mitchellville Rd, Ste 216	Bowie, MD 20716
9. Sustainable Star LLC	11-402E	3060 Mitchellville Rd, Ste 216	Bowie, MD 20716
10. Village of Bradner	06-113	130 N Main St	Bradner, OH 43406

Attachment A

Regulated Entities failing to file Annual Reports for 2011

12-01-EL-RPT, et al.

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Case No. 12-05-TP-RPT:			
Company Name(s)	Certificate	Address	City, State Zip
1. BetterWorld Telecom, LLC	90-6369	11951 Freedom Dr, 13th Fl	Reston, VA 20190
2. Earth Telecom, Inc., dba Union Telecom USA	90-6396	1688 Meridian Ave, Ste 509	Miami Beach, FL 33139
3. Geostar LLC	90-9387	3593 Medina Rd, Ste 149	Medina, OH 44256
4. Global NAPs Ohio, Inc.	90-9199	PO Box 02139	Cambridge, MA 02139
5. Maximum Communications, Inc.	90-5533	117 Williams St	Cincinnati, OH 45215-4601
6. Ohiotelnet.com, Inc.	90-9109	25 W Main St	Newark, OH 43055
7. Revolution Communications Company, Ltd., dba 1-800-4-A-PHONE	90-9151	4849 Greenville, Ste 1100	Dallas, TX 75205
8. Telecom North America Inc.	90-6076	1802 N Carson St, Ste 108-2683	Carson City, NV 89701
9. Telecom Ventures, LLC	90-9237	921 Eastwind Dr, Ste 104	Westerville, OH 43081-5316
10. Telephone & Two Way, Inc.	90-5557	5533 State Rd	Parma, OH 44134
11. Yak Communications (America), Inc.	90-6158	PO Box 414629	Miami Beach, FL 33141

Attachment B
Regulated Entities failing to pay their assessment for 2012

12-01-EL-RPT, et al.

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Company	Address	Amount Due	Certificate No.	IN
1. Arcelormittal USA LLC	3300 Dickey Rd East Chicago, IN 46312	100.00	11-364E	CRE
2. Avalon Energy Services LLC	5507 Lambeth Rd Bethesda, MD 20184	100.00	11-386E	CRE
3. BCE Nexxia Corporation	1821 Walden Office Square, Suite 400 Schaumburg, IL 60173	100.00	90-6162	CT
4. BP Oil Pipeline Company, dba Inland Corporation	550 Westlake Park Blvd., #1174B Houston, TX 77079	100.00	89-9011	PL
5. City of Canal Fulton	8870 Darrow Rd, # F106 Twinsburg, OH 44087	100.00	05-095G	CRG
6. City of Findlay	318 Dorney Plaza Findlay, OH 45840	100.00	11-224G	CRG
7. Commonwealth Energy LTD	PO Box 43086 Cleveland, OH 44143	100.00	11-363E	CRE
8. Covista, Inc.	740 Florida Central Pkwy, Suite 2028 Longwood, FL 32750	100.22	90-9189	CT
9. Energy Choice Risk Management LLC	1784 Eight Mile Rd Cincinnati, OH 45255	100.00	11-400E	CRE
10. Ernest Communications, Inc.	740 Florida Central Pkwy, Suite 2028 Longwood, FL 32750	174.17	90-9248	CT
11. Inmate Phone Systems Corporation	7034 Sophia Ave Van Nuys, CA 91406-3910	100.00	90-5177	CT
12. Maumee & Western Railroad Corporation	300 E. Walnut Street Corydon, IN 47112	100.00	N/A	RR
13. Midwest Energy Choice LLC	8091 Evergreen Ln Liberty Twp, OH 45044	100.00	11-394E	CRE

Attachment B
Regulated Entities failing to pay their assessment for 2012

12-01-EL-RPT, et al.

-2-

Company	Address	Amount Due	Certificate No.	IN
14. Navigator Telecommunications, LLC	PO Box 13860 North Little Rock, AR 72113-0860	387.72	90-9103	CT
15. NobelTel, LLC	5973 Avenida Encinas Suite 202 Carlsbad, CA 92008	100.00	90-6087	CT
16. Northeast Ohio Public Energy Council	31320 Solon Rd, Ste 20 Solon, OH 44139	100.00	01-044E	CRBOTH
17. OLS, Inc.	217 Roswell Street, Suite 100 Alpharetta, GA 30009	100.00	90-6147	CT
18. Southern Ohio Communications Services, Inc.	PO Box 488 Waverly, OH 45690	824.82	90-5522	CMRS
19. STi Prepaid, LLC, dba Telco Group	1250 Broadway, Floor 26 New York, NY 10001	115.00	90-6372	CT
20. StonePillar Energy	545 Metro Place S, Ste 100 Dublin, OH 43017	100.00	10-178G	CRBOTH
21. Symmes Township	9323 Union Cemetery Rd Symmes Township, OH 45140	100.00	10-253E	CRE
22. Tiger Natural Gas, Inc.	1422 E 71st, Ste J Tulsa, OK 74136	2,516.48	10-187G	CRG
23. United American Technology, Inc.	700 W. 15th Street, Suite 1 Edmond, OK 73013	100.00	90-6194	CT
24. Vanco Direct USA, LLC, dba Global Capacity Direct, LLC	740 Florida Central Pkwy, Suite 2028 Longwood, FL 32750	100.00	90-9313	CT
25. Voicecom Telecommunications, LLC	5900 Windward Pkwy Suite 500 Alpharetta, GA 30005	100.00	90-6220	CT
26. Working Assets Funding Service, Inc., dba Credo Long Distance	101 Market Street Suite 700 San Francisco, CA 94105	100.00	90-6218	CT

BEFORE

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CONCURRING OPINION OF COMMISSIONER ANDRE T. PORTER
AND COMMISSIONER LYNN SLABY

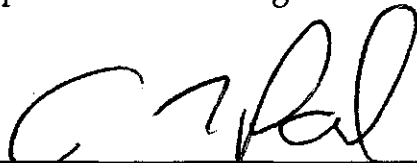
We concur with the majority, but write separately to emphasize a point.

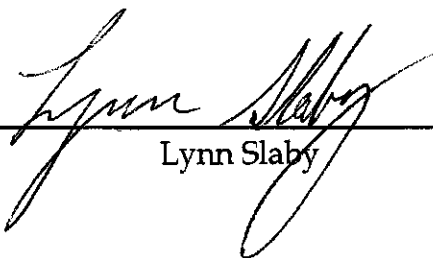
Every utility is required to file an annual report pursuant to Section 4905.14, Revised Code. The information in that report is limited to the requirements of Section 4905.10, Revised Code. Section 4905.10, Revised Code requires the disclosure of "gross earnings or receipts." It does not require disclosure of specific information of how the "gross earnings or receipts" were calculated. It is in fact simply a number upon which an assessment can be calculated by the Public Utilities Commission. If the Utility were to provide information specific as to the manner, method, or business policy to arrive at that number, that could be information that the Commission should treat as confidential pursuant to Section 4905.14, Revised Code.

In Case No. 12-05-TP-RPT, AT&T Mobility and Verizon Wireless (hereinafter "the companies") appear to be arguing that the "gross" number should be confidential. The companies argue that because they marked certain documents confidential, that makes them so. However, merely marking a document confidential does not establish confidentiality. The companies themselves point out, either by statute or Supreme Court language, that there is a test for determining whether or not a document is confidential.

One prong of that test is a determination that disclosure would create a competitive disadvantage.

There may be an argument that the supporting information of the "gross earnings or receipts" should be confidential. However, the companies did not make or support that argument in their Motion for a Protective Order to keep the gross number confidential. Therefore, they have failed to specifically argue how a "gross" number would create a competitive disadvantage for them.



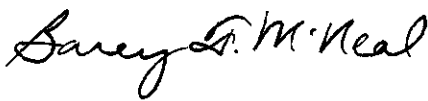
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Entered in the Journal

DEC 19 2012



Barcy F. McNeal
Secretary