

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Frontier)
North Inc. for a Commission Determination) Case No. 13-1528-TP-BLS
Pursuant to Section 4927.12, Revised Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) Section 4927.12(C)(3), Revised Code, establishes the requirements and a procedure whereby an incumbent local exchange carrier (ILEC) can demonstrate that an exchange area is subject to competition from two or more alternative providers offering a competing service, regardless of the technology and facilities used, to the basic local exchange service offered by the ILEC in the exchange area. An alternative provider could be a telephone company, a wireless provider, a telecommunications carrier, or a provider of internet protocol-enabled services, including voice over internet protocol (VoIP). Unless the Commission issues an order within 30 days of the filing finding that the requirements have not been met, the application will be deemed to be approved. Once a favorable determination is made, an ILEC may raise rates for basic local exchange service subject to an annual cap.
- (2) On June 28, 2013, Frontier North Inc. (Frontier North or company) filed an application seeking a Commission determination that the 223 exchange areas subject to this application qualified for alternative regulation pursuant to Section 4927.12(C)(3), Revised Code.
- (3) On July 23, 2013, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and a motion to deny part of Frontier North's application.
- (4) In support of intervention, OCC asserts that it satisfies the criteria set forth in Section 4903.221(B), Revised Code. In particular, OCC states that the nature and extent of its interest in this case is representing Frontier North's residential consumers in order to ensure that the application filed in this proceeding does not result in unreasonable or unlawful rate

increases that would harm them. OCC submits that this interest is different than those of any other party.

- (5) In regard to its motion to deny part of Frontier North's application affecting customers in 12 specific exchanges,¹ OCC asserts that the documentation that Frontier North filed to support its application does not demonstrate that two alternative providers are offering competing service to its basic service in the 12 identified exchanges as required by Section 4927.12(C)(3) Revised Code, and Rule 4901:1-6-14(C)(1)(c), Ohio Administrative Code (O.A.C.).

Specifically, OCC disagrees with the documentation provided by Frontier North in Ex. 2 of its application regarding Sun ISP, Skype, Clear Rate Communications, and American Broadband & Telecommunications. OCC argues that the documentation and service providers do not satisfy the requirements of Section 4927.12(C)(3)(a), Revised Code, due to the fact that these entities are not alternative providers in the delineated exchanges for the purposes of basic service pricing flexibility. According to OCC, eliminating the services of the aforementioned companies from consideration will leave no more than one alternative provider in each exchange.

With respect to VoIP services of Skype and Sun ISP, OCC asserts that Frontier North's documentation only generally discusses the services provided by these companies and fails to identify the specific exchanges in which the services are offered. Further, OCC contends that since neither Skype nor Sun ISP guarantees that customers will be able to reach 9-1-1 in an emergency, the companies cannot be considered as a competitor to Frontier North's basic service. In regard to Clear Rate Communications, OCC states that the general tariff language cited in the application is not sufficient to demonstrate that the company is actually providing service competing with Frontier North's basic service offering in the Amsterdam, Baltic, and Bowerston exchanges.

Relative to American Broadband & Telecommunications, OCC argues that the referenced tariff language is insufficient to show that American Broadband & Telecommunications is an

¹ These exchanges include the following: Ayersville, Amsterdam, Baltic, Bergholz, Bowerston, Cooperdale, Dillonvale-Mt. Pleasant, Jewett, LeTart Falls, Scio, Sinking Springs, and Summerfield.

alternative provider of residential service in the Amesville and Bergholz exchanges.

- (6) Frontier North's application was deemed to have met the requirements of Section 4927.12(C)(3), Revised Code, by operation of law.
- (7) On August 28, 2013, OCC filed an application for rehearing arguing that the Commission's failure to issue a ruling in this proceeding was unjust, unreasonable, and unlawful for: a) failing to file findings of fact and written opinions setting forth the reasons prompting the decisions arrived at in the record of a contested proceeding in violation of Section 4903.09, Revised Code, and b) permitting Frontier North the authority to raise rates in 12 exchanges even though it failed to show that at least two alternative providers are offering competing service in these exchange areas in accordance with Section 4927.12(C)(3)(a), Revised Code.

OCC claims that by filing a motion to intervene and motion to deny the application in part this proceeding became a contested case and, therefore, is subject to Section 4903.09, Revised Code. As a result, OCC believes that the Commission is obligated to explain through findings of fact and written opinions why the application should be approved based on the record in this proceeding. OCC contends that Sub. S.B. 162, which adopted Section 4927.12(C), Revised Code, did not exempt the Commission from complying with Section 4903.09, Revised Code. OCC also asserts that the Commission has previously recognized that cases in which objections are filed become contested cases requiring a written order.

Recognizing the difficulty associated with completing a review of the application within the allotted 30-day time frame, OCC asserts that the Commission could have issued an entry allowing itself more time to consider the issues raised on rehearing. OCC notes that the Commission has utilized such an approach in addressing applications for rehearing filed in prior cases.

- (8) For the reasons that follow, the Commission does not agree with any of OCC's assignments of error and, therefore, OCC's application for rehearing is denied. First, Section 4903.09, Revised Code, is not applicable in this situation. Section

4927.12(C)(3)(b), Revised Code, establishes that the Commission shall be deemed to have found that an application qualifies for alternative regulation of basic local exchange service unless the Commission, within thirty days after the filing of the application, issues an order finding that the requirements of the statute have not been met. Thus, under the statute, it is the Commission's responsibility to evaluate the application and to determine whether Frontier North's application demonstrates that two or more alternative providers offer competing service to the basic local exchange service offered by Frontier North. Should the Commission determine that the requirements of the statute have not been met; the Commission must affirmatively issue an order making such a determination. Since there is a presumption of approval, there is no procedural mechanism in place to allow for a further consideration of the application beyond the Commission review of the application.

Under OCC's theory, however, the filing of a motion to intervene and a motion to deny the application converts the statutory automatic case process into a "contested case" complete with hearings, a transcript of testimony, and exhibits in which the Commission must file findings of fact and written opinions setting forth the basis for our decision. Adopting OCC's position would circumvent the Commission's responsibility to determine, under the time lines set forth in the statute, whether an application satisfies the requirements of Section 4927.12, Revised Code.

Regarding OCC's assertion that, similar to its practice relative to applications for rehearing, the Commission could have granted more time for the purpose of considering the issues raised in the application, the Commission finds that Section 4903.10, Revised Code, provides that the Commission may grant or deny rehearing within 30 days of the filing of the application for rehearing and that in the absence of such action, the application for rehearing is denied. Therefore, pursuant to Section 4903.10, Revised Code, there are no specific criteria identified under which the Commission must grant or deny rehearing. This is in contrast to Section 4927.12(C)(3)(b), Revised Code, which sets forth specific criteria under which the automatic approval is granted unless the Commission issues an order finding that the requirements of the statute have not be met. Specifically, the Commission must make an affirmative

finding that the requirements of Section 4927.12(C)(3)(a), Revised Code, have not been met or else the application is deemed automatically approved. It stands to reason that if the requisite criteria are not satisfied, the application will be denied. There is no mechanism provided by the statute to suspend the application for further consideration.

Additionally, unlike the rehearing statute (Section 4903.10, Revised Code) which provides parties with a 10-day period of time to file memoranda contra and the Commission with a 30-day time frame to consider and issue an entry on rehearing, Section 4927.12, Revised Code, does not provide for the filing of motions or memoranda contra or allow for any additional time for the Commission to issue a ruling on any applicable motion. Therefore, inherently Section 4903.09, Revised Code, cannot apply to applications filed pursuant to Section 4927.12(C)(3)(b), Revised Code, since there will not be enough time available to engage in further development of the record regarding the issues raised. Specific to this case, OCC filed its motions just six days before the end of the 30-day approval period. The timing of OCC's filing did not even leave the Commission with a scheduled meeting to act if it so desired.

Further, the Commission notes that OCC relies upon the Commission's August 15, 1991, Supplemental Finding and Order in Case No. 89-564-TP-COI (89-564), to support its contention that the Commission has previously recognized that cases in which objections are filed are contested cases. The Commission distinguishes the cited prior ruling from the current case due to the fact that in the current case the Commission must comply with the statutory provisions set forth in Section 4927.12, Revised Code, and cannot deviate from the statutory criteria. In contrast, 89-564 was a Commission initiated investigation opened in order to establish alternative regulatory requirements for small telephone companies under statutory authority that provided the Commission more discretion to act (i.e., former Section 4927.03, Revised Code; adopted in 1988 through H.B. 563 and effective March 17, 1989). Former Section 4927.03, Revised Code, was superseded by new Chapter 4927, Revised Code, through Sub. S.B. 162 in 2010. Rehearing on OCC's first assignment of error is, therefore, denied.

In regard to OCC's second assignment of error, the Commission disagrees with OCC's position that Frontier North failed to show that at least two alternative providers are offering competing service to basic local exchange service in the involved 12 exchanges. OCC appears to equate "offering service" and "providing service" synonymously. The Commission has rejected similar OCC arguments in the past under the previous competitive test that was in place prior to the adoption of the current version of Section 4927.12, Revised Code. There is nothing new in OCC's argument in this proceeding that causes us to modify that past precedent. Rehearing on OCC's second assignment of error is, therefore, denied.

It is, therefore,

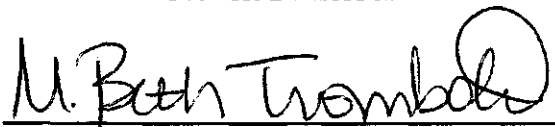
ORDERED, That OCC's application for rehearing is denied in accordance with finding (8). It is, further,

ORDERED, That a copy of this entry on rehearing be served upon Frontier North, OCC, their respective counsel, and any other interested person of record.

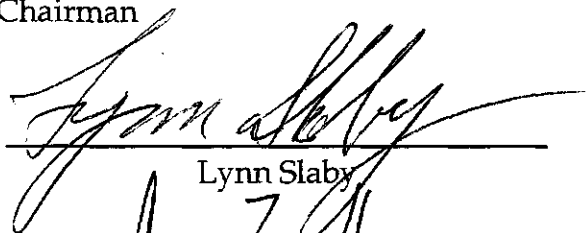
THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

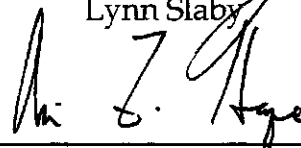
Steven D. Lesser



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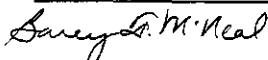


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JSA/vrm

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Barcy F. McNeal
Secretary