

In the Matter of the Application of )  
Middle Point Home Telephone Company ) Case No. 14-191-TP-UNC  
to Amend its Basic Local Exchange )  
Service Tariff and to Authorize a )  
Mechanism to Change Its Residential )  
BLES Rates under R.C.4927.15(C). )

Middle Point contends that the Public Utilities Commission of Ohio (“PUCO”) may allow Middle Point to increase its basic service rates through R.C. 4927.15(B) and (C).<sup>6</sup>

On February 21, 2014, in response to the Entry issued in this proceeding,<sup>7</sup> the Office of the Ohio Consumers’ Counsel (“OCC”) filed a Motion to Intervene and Comments regarding Middle Point’s proposed rate increase. In its Comments, OCC discussed that the FCC’s reasoning for the floor was to end “artificially low local rates in rural areas” that resulted from HCLS.<sup>8</sup> The FCC also phased-in the floor – setting the floor at \$10 beginning July 1, 2012 and \$14 beginning July 1, 2013 – in order “to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.”<sup>9</sup>

OCC also noted that there is no statutory basis for the PUCO to grant Middle Point’s requested rate increase.<sup>10</sup> OCC pointed out that R.C. 4927.15(B) is inapplicable for two reasons. First, the statute allows the PUCO to address company-specific issues regarding carrier access charges, but not HCLS matters.<sup>11</sup> This case involves a company-specific HCLS issue, which does not fall under R.C. 4927.15(B). Second, the statute refers to reductions in access charges ordered by the PUCO.<sup>12</sup> But Middle Point’s request

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<sup>6</sup> Application, Exhibit C at 3.

<sup>7</sup> See Entry (February 7, 2014) at 2. The Entry also set the February 28, 2014 as the deadline for reply comments in this proceeding. *Id.* But the PUCO’s offices were closed on February 28, 2014 due to a power outage. Per Ohio Adm. Code 4901-1-7(D), “[i]f the commission office is closed to the public for the entire day that constitutes the last day for doing an act or closes before its usual closing time on that day, the act may be performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday.” The PUCO extended the deadline for filings due on February 28, 2014 until March 3, 2014. See *In the Matter of the Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 14-38-AU-UNC, Entry (March 3, 2014).

<sup>8</sup> OCC Comments at 4, citing *Transformation Order*, ¶ 235.

<sup>9</sup> *Id.* at 5, citing *Transformation Order*, ¶ 242.

<sup>10</sup> *Id.* at 8.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

was prompted by FCC action, not PUCO action, concerning HCLS, and thus R.C. 4927.15(B) is inapplicable. OCC also observed that although R.C. 4927.15(C) mentions HCLS, it is not a company-specific statute.<sup>13</sup> Thus, the PUCO may address HCLS only in a generic proceeding.<sup>14</sup> The PUCO may not address company-specific HCLS issues through R.C. 4927.15(C).

Also on February 21, 2014, documents expressing support for Middle Point's Application were filed by the AT&T Entities ("AT&T")<sup>15</sup> and by the Ohio Telecom Association ("OTA"). AT&T filed a motion to intervene and comments. OTA did not intervene in this proceeding, but filed a letter supporting Middle Point's Application. Both AT&T and OTA assert that Middle Point's requested rate increase is lawful.<sup>16</sup> The discussion of the statutes in OCC's Comments shows that AT&T and OTA are wrong. OCC will not repeat the discussion in full here, but instead incorporates the discussion by reference.

OTA's letter contains three statements that OCC will address in these Reply Comments. Two of the statements allude to Middle Point's investments in order to serve customers. OTA states: "Middle Point's application will allow Middle Point to invest federal dollars in Ohio through HCLS funding, ensuring that Middle Point will be able to continue its investment in facilities and services and provide reliable and affordable service to its customers in the State."<sup>17</sup> OTA also states: "By granting Middle Point's

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<sup>13</sup> Id. at 7.

<sup>14</sup> Id.

<sup>15</sup> The AT&T Entities are The Ohio Bell Telephone Company, AT&T Corp., Teleport Communications America LLC, and New Cingular Wireless PCS LLC. See AT&T Comments at 1, n. 1.

<sup>16</sup> Id. at 3; OTA letter at 2.

<sup>17</sup> OTA letter at 2.

application the Commission can ensure that Middle Point will be able to continue to make the necessary investments to provide reliable and affordable residential BLES.”<sup>18</sup> Although OTA claims that the Application will allow Middle Point to maintain its current level of investment in facilities and services, OTA does not contend that denying or modifying the Application will impede Middle Point from providing adequate service to customers (although that may be implicit in OTA’s statement).

It should not be assumed that Middle Point’s basic service will suffer if Middle Point’s HCLS is reduced. Before the PUCO allows Middle Point – or any telephone company in Ohio – to substantially increase the rates it charges customers for basic service in order to avoid HCLS reductions, the PUCO should first examine whether the increase is really needed.

As OCC noted in its Comments, the FCC is skeptical about any claims of the harm that reduced HCLS will cause to telephone companies “absent detailed information about individualized circumstances....”<sup>19</sup> And in considering requests for waiver of its floor for HCLS, the FCC intends to “subject such requests to a rigorous, thorough and searching review comparable to a total company earnings review.”<sup>20</sup> The FCC stated that it would take into account revenues derived from unregulated and unsupported services, as well as revenues from facilities that are supported by Universal Service.<sup>21</sup>

OCC has recommended that the PUCO undertake a similar review when considering a telephone company’s request to increase its basic service rates because of the

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<sup>18</sup> Id.

<sup>19</sup> OCC Comments at 9, citing *Transformation Order*, ¶ 539.

<sup>20</sup> Id., citing *Transformation Order*, ¶ 540.

<sup>21</sup> Id.

FCC's HCLS decision.<sup>22</sup> The PUCO's review would not be to establish rates for the telephone company's unregulated and unsupported services. The PUCO does not have jurisdiction over non-basic service rates.<sup>23</sup> But the PUCO can, and should, determine whether the telephone company can, despite reduced HCLS, provide adequate service to its customers without significantly increasing the basic service rates its customers pay. To make that determination, the PUCO should fully examine the company's total revenues, including the ability of its parent company (if there is one) to make up for the reduced HCLS.

The third statement in OTA's letter that OCC responds to is: "[I]f the Commission were to reject Middle Point's application, these federal funds would be lost and would not be available to any provider."<sup>24</sup> OTA's statement misdirects the PUCO's attention from the real focus of this proceeding. This case focuses on whether Middle Point can provide adequate service to its customers without a 122% increase in the rates its customers must pay for basic service. The industry's desire to avoid the loss of some federal funding in Ohio should not be paramount to the effect that a significant rate increase would have on residential basic service customers.

OCC also takes issue with AT&T's characterization of the PUCO's February 2012 Entry in the Access Charge Case.<sup>25</sup> In discussing the FCC's order that reduced interstate access charges, AT&T claims that the PUCO "ordered a mirroring of those

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<sup>22</sup> Id.

<sup>23</sup> See R.C. 4927.03(D).

<sup>24</sup> OTA Letter at 2.

<sup>25</sup> *In the Matter of Intrastate Carrier Access Reform Pursuant to S.B. 162*, Case No. 10-2387-TP-COI, Entry (February 29, 2012) ("Access Charge Entry").

reductions on an intrastate basis.”<sup>26</sup> That is not the case, however. Instead, as the PUCO noted, “[T]he *FCC* adopted a transitional intercarrier compensation restructuring framework *for both intrastate and interstate telecommunications traffic exchanged with a local exchange carrier....*”<sup>27</sup> The PUCO also explained that *the FCC* directed carriers whose intrastate access charges were higher than their interstate access charges to reduce their intrastate access charges “by 50 percent of the differential between the rate and carrier’s interstate access rates by July 1, 2012.”<sup>28</sup>

The PUCO did not order telephone companies’ intrastate access charges to mirror their interstate access charges. Instead, the PUCO ordered affected carriers to file applications “to allow for the timely review and implementation of the requisite reductions” that the FCC had ordered.<sup>29</sup> AT&T’s characterization of the PUCO’s action is wrong.

In the Access Charge Case, the PUCO implemented federal policy. Federal policy should also guide the PUCO’s actions in this case. One policy the FCC has articulated through the *Transformation Order* is “to avoid a flash cut that would dramatically affect either carriers or the consumers they serve.”<sup>30</sup> Another federal policy is that carriers’ claims about HCLS reductions threatening their financial viability and imperiling service to their customers cannot be evaluated without detailed information about individualized circumstances.<sup>31</sup>

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<sup>26</sup> AT&T Comments at 2.

<sup>27</sup> Access Charge Entry at 2 (emphasis added).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Transformation Order*, ¶ 242.

<sup>31</sup> *Id.*, ¶ 539.

The PUCO should not grant Middle Point's request to increase the rates its customers pay for basic service by 122%, unless a thorough PUCO investigation of Middle Point's financial circumstances shows that Middle Point cannot provide adequate service to its customers without the increase. The PUCO should protect consumers from unnecessary rate increases for basic service.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of OCC's Reply Comments was served on the persons stated below via electronic transmission this 3<sup>rd</sup> day of March 2014.

/s/ Terry L. Etter

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