

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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).)	

**COMMENTS ON MIDDLE POINT’S AMENDED APPLICATION
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

In this case, the Public Utilities Commission of Ohio (“PUCO”) will determine whether Middle Point Home Telephone Company (“Middle Point”) may raise the rates its residential customers pay for basic local exchange service by \$3.00 per month (and maybe more), which is more than the amount allowed under Ohio law. Under the basic service pricing flexibility it received last year,¹ Middle Point may increase its monthly basic service rates by \$1.25 per year.² In order to meet the Federal Communications Commission’s (“FCC”) urban rate floor for high-cost Universal Service funding,³ however, Middle Point proposes to raise its monthly basic service rate by more than \$1.25 before June 1, 2014.

¹ *In the Matter of Middle Point Home Telephone Company to Obtain BLES Pricing Flexibility*, Case No. 13-1249-TP-BLS.

² See R.C. 4927.12(C)(1)(b).

³ *Connect America Fund*, FCC WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 (“*Transformation Order*”), ¶ 239.

In its initial Application filed on February 3, 2014, Middle Point sought PUCO approval to raise its monthly basic service rate by 122%, from the current rate of \$6.30 to the current FCC-prescribed urban rate floor of \$14.⁴ On March 25, 2014, Middle Point filed an Amended Application. In the Amended Application, Middle Point seeks to charge residential customers \$9.30 per month,⁵ a \$3.00 per month increase (47.6%) over the current rate.⁶ Middle Point also proposes to eliminate two rate plans that add charges to customers' bills – the optional extended area service calling plan and mileage charges for basic service customers who are outside Middle Point's base rate area.⁷

The Office of the Ohio Consumers' Counsel ("OCC") files these Comments on the Amended Application.⁸ OCC is an intervenor in this case on behalf of residential telephone customers.⁹ OCC appreciates Middle Point's effort, in its Amended Application, to ease the burden of its Application on customers through a lower proposed rate increase compared to the original Application and by eliminating two rate plans. Nevertheless, the PUCO cannot provide Middle Point the relief it is seeking in this proceeding.

As OCC explained in its Comments on the original Application, there is no statutory basis for the PUCO to establish the mechanism requested by Middle Point.¹⁰

⁴ See Application (February 3, 2014), Exhibit C at 1, 2.

⁵ See Amended Application (March 25, 2014), Exhibit B.

⁶ See *id.*, Exhibit C at 1.

⁷ See *id.* at 4-5.

⁸ OCC's Comments are in response to an Entry issued on March 27, 2014, which made comments on the Amended Application due by April 7, 2014 and reply comments due by April 10, 2014. March 27 Entry at 2.

⁹ OCC's Motion to Intervene, filed on February 21, 2014, was granted in the March 27 Entry (at 1).

¹⁰ OCC Comments (February 21, 2014) at 6-8.

Further, it is unclear whether Middle Point is requesting authority to increase its basic service rates for this one occasion, or if it is asking the PUCO to create a mechanism for recurring increases in the rates Middle Point's customers pay for basic service.¹¹ In addition, Middle Point has not provided detailed information to show that it cannot recoup the reduced High Cost Line Support ("HCLS") through means other than an increase in its basic service rates.

II. DISCUSSION

Middle Point's basic service customers have little real choice of providers. The Amended Application listed several alternative providers that were named in Middle Point's application for basic service flexibility: Time Warner Cable; Verizon Wireless; AT&T Wireless; and Sprint.¹² But Middle Point's basic service customers are not likely to switch to these providers' services because they cost considerably more than Middle Point's basic service, whether at the current \$6.30 rate or the \$9.30 proposed in the Amended Application.

The wireless services Middle Point named do not offer service that is comparably priced to Middle Point's basic service. Sprint's lowest monthly plan is \$19.99 per month, so long as calls are made using Sprint's network.¹³ The lowest monthly rate for AT&T Wireless is \$20.¹⁴ And "basic" phone service through Verizon Wireless is \$30 per

¹¹ See Amended Application, Exhibit C at 4.

¹² Id. at 5.

¹³

shop.sprint.com/mysprint/shop/plan/plan_wall.jsp?tabId=plnTab4410001&INTNAV=ATG:HE:HomeOfficePlans.

¹⁴ att.com/shop/wireless/plans/mobileshare.html.

month.¹⁵ In many cases, the prices are per phone, so if a household has more than one phone, the wireless services are even more expensive. All three carriers offer prepaid services that require a minimum dollar purchase that may be considerably higher than Middle Point's basic service.¹⁶ Some of the plans may be flat rate while others charge a per-call or per-minute rate. In addition, customers would have the added expense of purchasing a cell phone if they do not have a cell phone or if their cell phone cannot be configured for the particular plan.

Time Warner does offer a \$10 per month plan for 12 months.¹⁷ But it is unclear whether Time Warner provides stand-alone phone service in the Middle Point exchange. Using the same address Middle Point used for the exhibit to its basic service flexibility application,¹⁸ OCC tried to determine the rate of Time Warner's phone service in Middle Point. As shown in the attachment to these Comments, the "address cannot be validated as serviceable by Time Warner Cable." The exhibit to Middle Point's basic service flexibility application did not specify stand-alone phone service, and indeed shows only that Time Warner offers phone service in Middle Point as a bundle with digital TV and Internet service for \$99.99 per month for 12 months.¹⁹

Although the PUCO does not compare the incumbent's rates to the prices of alternative providers' services in basic service pricing flexibility cases, the PUCO should make such a comparison when it comes to determining the effect of rate increases as an

¹⁵ verizonwireless.com/wcms/consumer/shop/shop-data-plans/more-everything.html.

¹⁶ See verizonwireless.com/wcms/consumer/shop/prepaid.html; att.com/shop/wireless/plans/prepaidplans.html; sprint.com/landings/prepaid/index.html?INTNAV=ATG:HE:SPP:Plan.

¹⁷ See the attachment to these Comments.

¹⁸ Case No. 13-1249-TP-BLS, Application (May 28, 2013), Exhibit E at [2].

¹⁹ Id.

offset to HCLS reductions. The FCC attempted to minimize the effect of its *Transformation Order* on customers;²⁰ this should be a goal of the PUCO as well. The price differentials between Middle Point's basic service and the alternative providers' services, discussed above, show that Middle Point's customers have no actual alternative to Middle Point's basic service.

In its Comments on the original Application, OCC explained that there is no statutory basis for the PUCO to grant Middle Point's requested rate increase.²¹ The statutory analysis OCC provided in its February 21 Comments is as applicable to the Amended Application as it is to the original Application. OCC will not repeat the full statutory analysis here, but will incorporate the analysis by reference as if it were provided in full. OCC will summarize the statutory analysis below.

Middle Point cites two statutes – R.C. 4927.15(B) and (C) – as the basis for its request. R.C. 4927.15(B) is inapplicable for two reasons. First, the statute allows the PUCO to “order changes in a telephone company’s rates for carrier access....” This case involves a company-specific HCLS issue, which does not fall under R.C. 4927.15(B).²²

Second, the statute refers to reductions in access charges ordered by the PUCO: “*In the event that the public utilities commission reduces a telephone company’s rates for carrier access that are in effect on September 13, 2010, that reduction shall be on a revenue-neutral basis under terms and conditions established by the public utilities commission, and any resulting rate changes necessary to comply with division (B) or (C) of this section shall be in addition to any upward rate alteration made under section*

²⁰ See *Transformation Order*, ¶ 235.

²¹ OCC February 21 Comments at 6-8.

²² *Id.* at 7-8.

4927.12 of the Revised Code.” (Emphasis added.) But Middle Point’s request was not prompted by PUCO action reducing carrier access charges.²³ Rather, Middle Point’s request results from FCC action concerning HCLS. Middle Point’s reliance on R.C. 4927.15(B) is faulty.

And although R.C. 4927.15(C) mentions HCLS, it is not a company-specific statute.²⁴ The statute gives the PUCO “authority to address carrier access policy and to create and administer mechanisms for carrier access reform, including, but not limited to, high cost support.” Thus, the PUCO may address HCLS only in a generic proceeding.²⁵ The PUCO may not address company-specific HCLS issues through R.C. 4927.15(C).

The PUCO is a creature of statute and can only exercise the authority granted it under Ohio law.²⁶ The plain language of Ohio law does not grant the PUCO the authority to create a mechanism that allows a telephone company to raise the rates its customers pay for basic service to offset reductions in HCLS without a generic proceeding on carrier access reform.

Even if the PUCO were to adopt a mechanism, through a generic proceeding, for Middle Point to raise the rates its customers pay for basic service as a means to offset FCC-ordered reductions in HCLS, the PUCO still should not approve the mechanism Middle Point has proposed in its Amended Application. The rate increase Middle Point

²³ Id. at 8. The PUCO recognized just last month that the *FCC*, not the PUCO, “directed price cap carriers, rate-of-return carriers, and certain competitive local exchange carriers (CLECs) (i.e., those that benchmark rates to price cap or rate-of-return carriers) to reduce intrastate access rates in phases.” *In the Matter of Intrastate Carrier Access Reform Pursuant to S.B. 162*, Case No. 10-2387-TP-COI, Entry (March 27, 2014) at 1.

²⁴ OCC February 21 Comments at 7.

²⁵ Id.

²⁶ See *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St. 3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. See also *Canton Storage and Transfer Company, Inc. v. Pub. Util. Comm.*, 72 Ohio St. 3d 1, 5, 1995-Ohio-282, 647 N.E.2d 136.

proposed in its original Application was flawed.²⁷ The mechanism to offset FCC-ordered reductions in HCLS that Middle Point has proposed in its Amended Application contains similar flaws. Middle Point has not shown that reductions in HCLS will threaten its ability to provide adequate service or that it cannot offset any reduction in HCLS through increases to non-basic services.

Also, Middle Point seems to ask for overly broad authority to raise basic service rates beyond the statutory limit in order to offset HCLS reductions. The Amended Application states:

To address the effects of the *Transformation Order* and the timing of reporting requirements affecting the calculation of HCLS, Middle Point is seeking an order authorizing a mechanism to permit it to adjust its BLES rates pursuant to R.C. 4927.15. The proposed mechanism would permit Middle Point upon 30 days' notice to adjust the BLES rates to the urban local rate floor as established under Section 54.318 of Chapter 47 of the Code of Federal Regulations or any successor regulation.²⁸

It appears that Middle Point is seeking PUCO authority to increase its basic service rates to the urban floor, whatever that level might be, and to use this authority at its own discretion in the future.²⁹ This view is reinforced by the following statement in the Amended Application: “*At this time* and in light of concerns raised by one party, Middle Point is not seeking to exercise *the full authority it would have under the*

²⁷ OCC noted in its February 21 Comments that the PUCO should not allow any telephone company to offset HCLS reductions by increasing the rates its customers pay for basic service without first examining the company's ability to offset HSLC reductions through increases in rates to its non-basic services. OCC February 21 Comments at 9-10. Although the PUCO does not have jurisdiction over non-basic service rates (see R.C. 4927.03(D)), 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. See OCC March 3 Reply Comments at 5.

²⁸ Amended Application, Exhibit C at 4.

²⁹ As Middle Point discusses in its Amended Application (at 2), the urban rate floor is now at \$14 but will increase to \$20.46 on July 1, 2014.

mechanism through this Amended Application.”³⁰ The PUCO should not give Middle Point, or any telephone company, carte blanche authority to offset reduced HCLS by increasing the rates that customers must pay for basic service. The PUCO should examine whether such rate increases are necessary, as discussed herein and in OCC’s Comments on the original Application in this case.

III. CONCLUSION

A telephone company’s increase in basic service rates to customers as an offset for reduced HCLS should only occur if the company shows that it cannot provide adequate service without raising basic service rates. An increase to basic service rates should be allowed only as a last resort. To protect customers, the PUCO should examine whether the FCC-prescribed HCLS reductions will affect Middle Point’s ability to provide adequate service.

Respectfully submitted,

BRUCE J. WESTON
OHIO CONSUMERS’ COUNSEL

/s/ Terry L. Etter

Terry L. Etter, Counsel of Record
Assistant Consumers’ Counsel

Office of the Ohio Consumers’ Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
(614) 466-7964 (Etter direct)
terry.etter@occ.ohio.gov

³⁰ Id. at 4 (emphasis added).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission this 7th day of April 2014.

/s/ Terry L. Etter

Terry L. Etter

Assistant Consumers' Counsel

SERVICE LIST

William Wright
Chief, Public Utilities Section
Attorney General's Office
180 E. Broad Street, 6th Floor
Columbus, Ohio 43215
william.wright@puc.state.oh.us

Frank P. Darr
McNees, Wallace & Nurick LLC
21 E. State Street, 17th Floor
Columbus, Ohio 43215
fdarr@mwncmh.com

Jon F. Kelly
AT&T Services, Inc.
150 E. Gay Street, Room 4-A
Columbus, Ohio 43215
jk2961@att.com

Attorney Examiner:
Jay.Agranoff@puc.state.oh.us



Your address cannot be validated as serviceable by Time Warner Cable. Please continue shopping. If you submit an order online, a representative will email you to advise you about the serviceability of this address by TWC.

You can also order and/or confirm that your address is serviceable by calling 1-855-243-8892.

I'm interested in: ☐ TV ☐ Internet ☒ Phone ☐ Show All

You are currently setting up service for:

106 1/2 East Jackson St, MIDDLE POINT,
OH 45863

[> Edit Address](#) [Channel Lineup](#)

Helpful Hints

- > How much will I pay once my promotion has ended?
- > What is Whole House HD-DVR?
- > How do I add Premium channels?
- > What channels do I get?
- > I don't see bundle offers with a CableCARD™. What is available and how do I order?

Select Your Own Services

Choosing more than one service may give you additional monthly savings.



Phone

Price Drop: Was \$19.99/Mo. Now talk to friends for just 33 cents a day!

Starting at
\$10⁰⁰ Per Month*
For 12 Months

- Home Phone National \$10.00/mo. For 12 Months

[See What's Included](#)

Contact Us

- [Chat online](#)
- [Call us at 855-243-8892](#)

*All prices exclude applicable taxes, fees, equipment, installation, activation fee, Directory Assistance, Operator Services, International calls and other one-time charges. By enrolling in this promotion, customer agrees to be bound by the terms of TWC's Subscriber Agreement which can be found at

[+ View More](#)

[Privacy Policy](#) | [Terms of Use](#)

© 2008-2014 Time Warner Cable Inc. All rights reserved.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/7/2014 2:55:15 PM

in

Case No(s). 14-0191-TP-UNC

Summary: Comments Comments on Middle Point's Amended Application by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.