

FILE

# BEERY & SPURLOCK CO., L.P.A.

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Michael Spurlock  
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*Attorneys and Counselors at Law*

David A. Turano,  
*of counsel*

January 7, 2015

The Public Utilities Commission of Ohio  
Docketing Division  
Attn: Barcy F. McNeal, Secretary  
180 East Broad Street, 11<sup>th</sup> Floor  
Columbus, OH 43215

**Re: Case No. 14-01-AU-RPT  
Filing of 2013 Annual Reports**

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PUCO

Secretary McNeal:

Enclosed for filing on behalf of U.S. South Communications, Inc. please find the original and three (3) copies of an Application for Rehearing and Motion for Special Order for Stay. This pleading relates to the Entry on Rehearing entered in this docket on December 10, 2014.

Please acknowledge receipt by date stamping and returning the additional copies of this filing. Thank you, in advance, for your attention to this matter.

Very truly yours,



David A. Turano

DAT:bkf

Enclosures

cc: Allison D. Rule, Esquire  
Michael D. Gruenhut, Esq.

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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing of Annual	)	
Reports for Calendar Year 2013 by all	)	Case No. 14-01-AU-RPT
Regulated Entities	)	

**APPLICATION FOR REHEARING AND  
MOTION FOR SPECIAL ORDER FOR STAY**

U.S. South Communications, Inc. ("U.S. South"), by its counsel and pursuant to Section 4903.10, Ohio Revised Code ("ORC"), and Rule 4901-1-35(A), Ohio Administrative Code ("O.A.C."), hereby applies for rehearing from the Entry on Rehearing entered in this docket on December 10, 2014 ("December 10 Entry") and, more specifically, from the decision therein that U.S. South's certification to provide intrastate telecommunication services (Certificate No. 90-6065) be revoked for failure to timely file a 2013 annual report. On the basis of the information set forth in the accompanying Memorandum in Support, U.S. South submits that the December 10 Entry is to be considered either unreasonable or unlawful.

In addition, to prevent disruption of service to customers, U.S. South hereby moves for a special order pursuant to Section 4903.10(B), ORC, staying revocation of its Certificate 90-6065 until such a time as the Commission has an opportunity to consider and decide this Application for Rehearing. Should the Commission act on the Application for Rehearing without first granting the requested motion for stay, U.S. South requests that its Certificate 90-6065 be reinstated retroactive to December 10, 2014.

WHEREFORE, U.S. South respectfully requests the Commission grant its Application for Rehearing and reinstate its Certificate 90-6065. U.S. South further requests that the Commission stay the revocation of Certificate 90-6065 pending its ruling on the Application for Rehearing, or, if

the Commission acts on the rehearing application without first granting the requested stay, that the rehearing entry reinstate Certificate 90-6065 retroactive to December 10, 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Turano", with a long horizontal flourish extending to the right.

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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Filing of Annual	)	
Reports for Calendar Year 2013 by all	)	Case No. 14-01-AU-RPT
Regulated Entities	)	

**MEMORANDUM IN SUPPORT OF APPLICATION FOR REHEARING AND  
MOTION FOR SPECIAL ORDER FOR STAY**

This proceeding was initiated by Order entered January 22, 2014 wherein the Commission identified certain regulated entities that had failed to file their annual reports in a timely manner or failed to remit payment of the 2013 PUCO assessment required by Section 4905.10, ORC. U.S. South was identified in Appendix A to that Order as one of the non-compliant entities as concerns the filing of an annual report. As pertinent here, each non-complying entity was directed to file its annual report by April 30, 2014 or to request an automatic 30-day extension in which to submit its filing. By Entry entered April 30, 2014, the deadline for filing annual reports was extended to May 30, 2014. By Order entered August 20, 2014, the Commission noted that a number of entities had yet to comply. In that decision, the non-complying entities were assessed a civil forfeiture in the amount of \$1,000 pursuant to Section 4905.54, ORC, and each was directed to file prior to September 1, 2014 either its annual report or a motion showing cause why its authority should not be revoked. The December 10 Entry identified thirteen (13) regulated entities that had failed to respond to the previous directives or otherwise show cause for their failure to comply. As a result, the operating certificates of the listed entities were revoked, and each was directed to immediately cease providing regulated service in Ohio and to notify their customers that service was no longer permitted. U.S. South was listed as one of the thirteen (13) non-complying entities.

As the records of the Commission will confirm, U.S. South has held its Certificate 90-6065 since July of 2002, a period of more than 12 years. U.S. South, a Georgia corporation, maintains its headquarters in Atlanta, Georgia. U.S. South is a provider of resold intrastate long distance services to small and large businesses, as well as residential customers. Its service area extends to all or portions of several states. While its service in Ohio under Certificate 90-6065 has been limited, those services are integral to its total operations. For this reason, and to permit further expansion in the Ohio market, U.S. South is seeking immediate reinstatement of its Certificate 90-6065.

Attached as Appendix A is the Affidavit of Michelle Richardson, Long Distance Manager for U.S. South, explaining U.S. South's failure to file its 2013 annual report on a timely basis. As Ms. Richardson explains, prior to 2014 U.S. South relied heavily on the services of an outside regulatory consultant to administer, monitor and complete state regulatory filings which, of course, would include its PUCO annual report. The regulatory consultant unexpectedly passed in February 2014. U.S. South was not made aware of her passing for some period thereafter. Preparation and submission of state regulatory filings were immediately brought in-house, but critical files that the outside consultant maintained, including spreadsheets and records of filings, were lost, destroyed or otherwise unavailable. Most of 2014 has been devoted to the daunting task of reconstructing and updating state regulatory filings. As she worked her way through the resulting administrative maze, Ms. Richardson explains that she simply overlooked the timely filing of U.S. South's 2013 PUCO annual report. She concludes by noting that the 2013 PUCO annual report has been completed and was submitted to and accepted by the PUCO on December 16, 2014.

U. S. South recognizes and acknowledges that regulated entities are expected to fully comply with the reporting requirements of the Commission. Here, however, U.S. South submits that the penalty of revocation of its Certificate 90-6065 is unreasonably disproportionate to the offense of

failing to timely file its annual report, particularly when the failure was due to the untimely death of U.S. South's outside regulatory consultant (the individual responsible for ensuring completion and submission of state filings). U.S. South has a demonstrated history of full compliance in over twelve (12) years of certification, and the required 2013 annual report has now been submitted.

Revocation of Certificate 90-6065 will cause irrevocable harm to U.S. South. Not only would revocation cause U.S. South to lose all of its current customers, it would be extremely confusing and a hardship to the customers themselves who will need to go elsewhere for their telecommunication services. As the Ohio Supreme Court noted in *Adams v. Pub. Util. Comm.*, 141 Ohio St. 255, 258 (1943), "(c)ertificates of public convenience and necessity are granted for the benefit of the public and not the recipients of the certificates. Anticipated benefit to applicants or possible detriment to other certificate holders are only incidental and secondary." Revocation of Certificate 90-6065 would penalize U.S. South customers directly, an outcome that is clearly contrary to sound public policy.

Additionally, since the civil forfeiture assessed against U.S. South was based solely on the untimely filing of its annual report, and in view of the additional facts that U.S. South's annual report was tendered on December 16, 2014, and that U.S. South has a long history of full compliance with the Commissioner's rules and regulations, U.S. South respectfully requests, *nunc pro tunc*, a waiver of the \$1,000 civil forfeiture which was assessed against U.S. South by the December 10 Entry.

Section 4903.10(B), ORC provides where an application for rehearing has been filed before the effective date of the order to which rehearing is sought, the effective date of such order, unless otherwise ordered by the Commission, shall be postponed or stayed pending the disposition of the rehearing application. Here, however, the December 10 Entry made revocation of Certificate 90-

6065 effective immediately. As a result, U.S. South moves for a special order from the Commission staying the revocation of Certificate 90-6065 until the Commission has the opportunity to consider and decide its rehearing application. Special orders of this type are specifically contemplated under Section 4903.10(B), ORC, which states, in part, “In all other cases the making of such an application [for rehearing] shall not excuse any person from complying with the order, or operate or stay or postpone the enforcement thereof, without *a special order of the commission*” (emphasis added).

Considering the irreparable harm U.S. South will suffer and the disruption of service its customers will experience if Certificate 90-6065 is not reinstated, U.S. South respectfully requests that the Commission issue a special order staying the order revoking its Certificate 90-6065 until the Commission has an opportunity to consider and decide its application for rehearing. Should the Commission elect to act on the application for rehearing without considering its motion to stay, U.S. South urges the Commission to reinstate the Certificate 90-6065 retroactive to December 10, 2014 so that U.S. South will not be subject to additional penalties for continuing to service its customers during the period its rehearing request is pending.

WHEREFORE, U.S. South respectfully requests the Public Utilities Commission of Ohio to grant its Application for Rehearing and reinstate its Certificate 90-6065, accept its 2013 annual report as tendered, and waive the previously assessed civil forfeiture. U.S. South further requests that the Commission stay revocation of Certificate 90-6065 pending a ruling on the Application for Rehearing, or, should the Commission act on the Application for Rehearing without first granting the request to stay, that the rehearing entry reinstate Certificate 90-6065 retroactive to December 10, 2014.

Respectfully submitted,

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**Case No. 14-01-AU-RPT  
(Filing of 2013 Annual Reports)  
U.S. South Application for Rehearing**

## **Appendix A**

**(Affidavit of Michelle Richardson, Long Distance Manager)**

**Before the  
Public Utilities Commission of Ohio**

In the Matter of the	)	
Filing of Annual Reports for Calendar	)	Case No. 14-01-AU-RPT
Year 2013 by All Regulated Entities	)	

**AFFIDAVIT  
*of*  
MICHELLE RICHARDSON**

Michelle Richardson, being duly sworn, deposes and says that:

1. I am employed by U.S. South Communications, Inc. (“U.S. South” or the “Company”). My business address is U.S. South Communications, Inc., 250 Williams Street, Atlanta, Georgia 30303. My current job title is Long Distance Manager.
2. U.S. South currently provides residential resold long distance services to eight customers in Ohio. However, the Company is in the process of discontinuing its resold long distances services. All impacted Ohio customers have been notified, in writing, of this impending change and have been advised to seek a substitute provider of long distances services. In addition, each impacted customer has been provided several months advanced notice that their U.S. South resold long distance service will be discontinued. U.S. South will likewise provide written confirmation to The Public Utilities Commission of Ohio (“PUCO”) once it discontinues its provision of resold long distances services to customers in Ohio.
3. That said, U.S. South also provides wholesale long distance services to telecommunications carrier customers. It will continue to do so after it discontinues its

resold residential long distance services. Therefore, continued PUCO certification is necessary.

4. My duties as Long Distance Manager include reviewing and executing state regulatory filings on behalf of U.S. South. Prior to 2014, I was assisted in the administration, monitoring, completion and filing of all state regulatory filings for U.S. South by a third-party regulatory consultant, Roberta Ferguson. As part of my job duties, I supervised and corresponded with U.S. South's regulatory consultant in order to ensure timely filing of required documents.

5. In or around January 2014, Ms. Ferguson stopped responding to email correspondence, and all efforts to contact her by mail or phone proved unsuccessful.

6. At that point, I took over her responsibilities. However, my efforts to do so were hampered by the fact that Ms. Ferguson maintained critical files, including spreadsheets and records of all filings that she made on behalf of U.S. South and which filings were coming due.

7. Subsequently, it was discovered that Ms. Ferguson had died suddenly in or around February 2014.

8. I attempted to recover the files that she maintained on behalf of U.S. South, but all documentation had been destroyed or lost upon Ms. Ferguson's death.

9. During the timeframe from January 2014 through the present, I have been diligently attempting to reconstruct the filings maintained by Ms. Ferguson and gain an understanding of all filings that were missed as a result of Ms. Ferguson's death, as well as prepare for any filings that were coming due.

