

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Reports for)	
Fiscal Assessment of all Regulated Entities)	Case No. 14-01-AU-RPT
for Calendar Years 2013 and 2014.)	Case No. 15-01-AU-RPT

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

American Phone Services Corporation (“American Phone” or the “Company”), by its counsel and pursuant to Section 4903.10, Ohio Revised Code (“O.R.C.”), and Rule 4901-1-35(A), Ohio Administrative Code (“O.A.C.”), hereby applies for rehearing from the Finding and Order entered in this docket on May 13, 2015 (the “May 13 Entry”) and, more specifically, from the decision therein that American Phone’s certification to provide intrastate telecommunication services (Certificate No. 90-5955) be revoked for failure to timely pay its 2014 PUCO assessment. On the basis of the information set forth in the accompanying Memorandum in Support, American Phone submits that the May 13 Entry is to be considered either unreasonable or unlawful.

In addition, to prevent disruption of service to customers, American Phone hereby moves for a special order, pursuant to O.R.C. Section 4902.10(B), staying revocation of its Certificate No. 90-5955 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, American Phone requests that its Certificate No. 90-5955 be reinstated retroactive to May 13, 2015.

WHEREFORE, American Phone respectfully requests the Commission grant its Application for Rehearing and reinstate its Certificate No. 90-5955. American Phone further

requests that the Commission stay the revocation of Certificate No. 90-5955 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 No. 90-5955 retroactive to May 13, 2015.

Respectfully submitted,

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

Case No. 14-01-AU-RPT was initiated by Finding and Order entered January 22, 2014 (the “14-01 Order”), wherein the Commission identified certain regulated entities that had failed to file their annual reports (*see*, 14-01 Order, Appendix A) and identified certain regulated entities that had failed to pay their 2013 PUCO assessment (*see*, 14-01 Order, Appendix C). American Phone was identified in Appendix A to the 14-01 Order and promptly filed its 2014 annual report. Thus, American Phone’s compliance with the 14-01 Order is not at issue in these proceedings.

Case No. 15-01-AU-RPT was initiated by Entry of January 28, 2015 (the “15-01 A/R Entry”), wherein the Commission identified certain regulated entities that had failed to file their annual reports in a timely manner. Unlike the 14-01 Order, the 15-01 A/R Entry did not identify the 2014 PUCO assessments chargeable to the named regulated entities. American Phone was identified in an attachment to the 15-01 A/R Entry as one of the non-compliant entities as concerns the filing of an annual report for 2014. American Phone filed its 2014 annual report on or about April 20, 2015, in compliance with the 15-01 A/R Entry. As a result of this filing, American Phone believed itself to be in compliance with the Commission’s Orders comprising Case No. 15-01-AU-RPT.

By Entry of April 8, 2015 in Case No. 15-01-AU-RPT (the “15-01 Assessment Entry”), the Commission identified certain regulated entities that were required to remit payment of the 2014 PUCO assessment, as required by O.R.C. Section 4905.10. American Phone was identified in an attachment to the 15-01 Assessment Entry as one of the non-compliant entities as concerns the payment of the 2014 PUCO assessment. As pertinent here, each non-complying entity was directed to pay its respective PUCO assessment by April 30, 2015. The 15-01 Assessment Entry was served on American Phone on April 20, 2015, which was the same day the Company filed its 2014 annual report. The timing of these two events lent support to American Phone’s belief that it had complied with the Commission’s Orders in Case No. 15-01-AU-RPT.

By its May 13 Entry, the Commission revoked American Phone’s certification to provide intrastate telecommunication services (Certificate No. 90-5955) for failure to timely pay its 2014 PUCO assessment. Upon its receipt of the May 13 Entry, American Phone became aware for the first time that it was not in compliance with all Orders issued by the Commission in Case No. 15-01-AU-RPT. Immediately upon learning of this non-compliance, the Company paid the \$100 assessment in full. To the best of the Company’s knowledge and belief, there are no outstanding non-compliances on the part of American Phone, and but for the May 13 Entry, American Phone would be authorized to provide services pursuant to Certificate No. 90-5955.

Attached as Appendix A is the Affidavit of Riccardo Ferranti, President of American Phone, explaining the reasons behind American Phone’s initial non-payment of the \$100 assessment. As Mr. Ferranti explains, the method by which the Commission notified regulated entities of the 2014 PUCO assessment was confusing at best, as it was served separate and apart from, and nearly three (3) months after, the 15-01 A/R Entry. The confusing nature of these proceedings was acknowledged by Entry of the Commission’s Attorney Examiner, dated May

12, 2015, wherein an extension of time to file was granted by the Commission, *sua sponte*. Upon deciphering what had occurred, the Company immediately paid the \$100 assessment, as it had done in the past.

American Phone recognizes and acknowledges that regulated entities are expected to fully comply with the reporting requirements of the Commission. Here, however, American Phone submits that the penalty of revocation of its Certificate No. 90-5955 is unreasonably disproportionate to the offense of failing to timely pay its 2014 PUCO assessment. This is particularly true when the failure was due to the confusing nature of these proceedings and separating notice of the assessment from the annual report filing requirement. American Phone has demonstrated a history of full compliance in all prior years of certification, and the 2014 PUCO assessment has been paid in full.

Revocation of Certificate No. 90-5955 will cause irrevocable harm to American Phone. Not only would revocation cause the Company to lose all of its current customers in Ohio, 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 the Company’s Certificate No. 90-5955 would penalize American Phone customers directly, and such an outcome is clearly contrary to sound public policy.

O.R.C. Section 4903.10(B) provides where an application for rehearing has been filed before the effective date of the order from 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 May 13 Entry made revocation of Certificate No. 90-5955 effective immediately. As a result, American Phone moves for a special order from the Commission staying the revocation of Certificate No. 90-5955 until the Commission has the opportunity to consider and decide its rehearing application. Special orders of this type are specifically contemplated under O.R.C. Section 4903.10(B), which states, in pertinent 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 American Phone will suffer and the disruption of service its customers will experience if Certificate No. 90-5955 is not reinstated, American Phone respectfully requests that the Commission issue a special order staying the order revoking its Certificate No. 90-5955 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 this motion to stay, American Phone urges the Commission to reinstate Certificate No. 90-5955 retroactive to May 13, 2015, so American Phone will not be subject to additional penalties for continuing to service its customers during the period its rehearing request is pending.

WHEREFORE, American Phone respectfully requests the Public Utilities Commission of Ohio grant its Application for Rehearing and reinstate Certificate No. 90-5955, accept the Company’s payment of the 2014 PUCO assessment as tendered, and waive any civil forfeiture(s) assessed as to events preceding this Application for Rehearing. American Phone further requests that the Commission stay revocation of Certificate No. 90-5955 pending a ruling on the

Application for Rehearing, or, should the Commission act on the Application for Rehearing without first granting the requested stay, that the rehearing entry reinstate Certificate No. 90-5955 retroactive to May 13, 2015.

Respectfully submitted,

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Summary: App for Rehearing and Motion for Special Order for Stay electronically filed by Mr. DAVID A FERRIS on behalf of American Phone Services Corporation