

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)	
of the Ohio Adm. Code Chapter 4901:1-6,)	Case No. 14-1554-TP-ORD
Telephone Company Procedures and)	
Standards.)	

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION’S
MEMORANDUM CONTRA
THE CONSUMER GROUPS’ APPLICATION FOR REHEARING**

I. Introduction

The Commission is establishing, via this proceeding, new regulations associated with the withdrawal or abandonment of basic local exchange service (“BLES”) by an incumbent local exchange carrier (“ILEC”). The Ohio Cable Telecommunications Association (“OCTA”) has participated throughout this rulemaking proceeding and now responds to select arguments raised in the application for rehearing that was jointly filed by six consumer entities (jointly “Consumer Groups”).¹ The OCTA urges the Commission to reject the Consumer Groups’ proposed regulations on voice service providers, which they propose to be included in provisions (F) and (G) of Rule 4901:1-6-21.

Rule 4901:1-6-21, as set forth in the Commission’s November 30, 2016 Finding and Order, would amplify the Commission’s authority over the withdrawal or abandonment of BLES by ILECs under R.C. 4927.10.² Nevertheless, Rule 4901:1-6-21 should remain appropriately

¹ The six Consumer Groups are the Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. and Southeastern Ohio Legal Services.

² R.C. 4927.10 states in part: “(A) Subject to division (B) of this section, if the federal communications commission adopts an order that allows an incumbent local exchange carrier to withdraw the interstate-access component of its basic local exchange service under 47 U.S.C. 214, neither of the following shall apply, beginning when the order is adopted, with regard to any exchange area in which an incumbent local exchange carrier withdraws that component: “(1) The prohibition contained in division (D) of section 4927.07 of the Revised Code against the withdrawal or abandonment of basic local exchange service by an incumbent local exchange

tailored to fit within the confines of the statutory authority.³ As such, the effort by the Consumer Groups to expand Rules 4901:1-6-21(F) and (G) beyond the withdrawal or abandonment of BLES by an ILEC should be rejected because such expansion is unjustified and, in any event, exceeds the underlying statutory authority. In this regard, the OCTA's own rehearing application addresses Rules 4901:1-6-21(F) and (G), urging the Commission to ensure that the rules it establishes are consistent with and do not exceed its statutory authority. The OCTA's position is consistent with the applications for rehearing filed by AT&T Ohio ("AT&T") and the Ohio Telecommunications Association ("OTA"). AT&T and the OTA contend on rehearing that provisions (F) and (G) exceed the Commission's statutory authority,⁴ consistent with the arguments raised by the OCTA in the first assignment of error of its application for rehearing. The OCTA's position is also consistent with the Consumer Groups' concerns on rehearing that provision (G) is unclear (vague) as to how and when the Commission would apply all of Rule 4901:1-6-21 to the provider,⁵ which the OCTA argued in its second assignment of error in its application for rehearing. Instead of further revising Rules 4901:1-6-21(F) and (G) as the Consumer Groups argue, however, the two rules should be removed altogether.

carrier, provided that the carrier gives at least one hundred twenty days' prior notice to the public utilities commission and to its affected customers of the withdrawal or abandonment; * * *."

³ Other changes for the chapter should likewise be appropriately tailored to the statutory authority. This would include properly crafted definitions, including the definition of "carrier of last resort" in Rule 4901:1-6-01(F), so that the carrier-of-last-resort responsibilities are applied to ILECs and not imposed on entities that are not ILECs, just as is intended by Rule 4901:1-6-27.

⁴ AT&T Application for Rehearing at 14-18 (sixth and seventh assignments of error) and OTA Application for Rehearing at 7-9 (second assignment of error).

⁵ Consumer Groups Application for Rehearing at 8 (fifth assignment of error).

II. Argument

A. The Consumer Groups' suggested revisions on rehearing to Rules 4901:1-6-21(F) and (G) are unlawful.

The Consumer Groups advocate in their fourth and fifth assignments of error that the Commission revamp provisions (F) and (G) of Rule 4901:1-6-21 to impose new regulatory requirements on providers of voice service seeking to withdraw or abandon voice service. The Consumer Groups essentially want the new BLES withdrawal/abandonment process to be automatically applied to a sole provider of voice service when it seeks to withdraw or abandon voice service. As set forth in the Finding and Order, provisions (F) and (G) of Rule 4901:1-6-21 state:⁶

- (F) If the sole provider of voice service seeks to withdraw or abandon such voice service, it shall notify the Commission at least thirty days prior to the withdrawal or abandonment through the filing of a withdrawal of voice service (WVS) consistent with the authority granted to the commission in division (A) of section 4927.03 of the Revised Code.
- (G) If the Commission determines that: (1) a residential customer of voice service will not have access to 9-1-1 service if the customer's current provider withdraws or abandons its voice service; or (2) the current provider of voice service is the sole provider of emergency services to residential customers, pursuant to the authority granted to the commission in division (A) of section 4927.03 of the Revised Code, that provider may be subject to all the provisions of this rule, on a case-by-case basis.

The Consumer Groups urge the Commission to establish:⁷

- (1) A longer notice time period than what is in provision (F);
- (2) A specific process for determining when the provider is a “sole” provider; and

⁶ Finding and Order at Attachment A pages 38-39.

⁷ Consumer Groups Application for Rehearing at 6-8 (fourth assignment of error).

- (3) A means for customers to provide information to the Commission about the lack of alternative voice services.

Although the Consumer Groups cite to R.C. 4927.10(A)(1) as support, they incorrectly contend that the statute requires “telephone companies” abandoning basic service to give customers and the Commission 120 days’ notice.⁸ In fact, R.C. 4927.10(A)(1) applies to ILECs only, not to all “telephone companies.” Moreover, R.C. 4927.10 as a whole addresses BLES withdrawals or abandonments by ILECs only, and is inapplicable to such activities by other types of carriers. Furthermore, R.C. 4927.10 does not apply to any other services except BLES, which, pursuant to R.C. 4927.01(A)(18), is distinguished from voice service.⁹ For all of these reasons, R.C. 4927.10 does not authorize the Commission to create an administrative rule that would apply the new BLES withdrawal/abandonment process to non-ILECs or to services other than BLES. R.C. 4927.10, likewise, does not provide statutory authority to establish a similar new withdrawal/abandonment process and apply it to non-ILECs or other services. The Consumer Groups’ requests are outside the Commission’s statutory authority and should be rejected.

B. The Consumer Groups’ suggested revisions on rehearing to Rules 4901:1-6-21(F) and (G) are unreasonable because they are not justified by virtue of the enactment of R.C. 4927.10.

The Consumer Groups also contend that their suggested changes should be incorporated into Rule 4901:1-6-21 because the rules would be unreasonable without them. The Consumer Groups allege that residential customers of a sole provider of voice service are in the “same situation” as residential customers of basic services, and both groups of customers “should be

⁸ Consumer Groups Application for Rehearing at 7.

⁹ R.C. 4927.01(A)(1), (18).

protected equally.”¹⁰ Whatever the merit of such a proposal in the abstract, the Commission must have the requisite legal authority to support a decision to expand that rule and, as explained, it does not. The Commission’s regulatory authority over voice service remains the same as it was prior to the enactment of R.C. 4927.10. The enactment of R.C. 4927.10 simply does not otherwise justify imposing the Consumer Groups’ proposed new regulatory obligations on providers of voice service. The Consumer Groups’ desire to impose a corollary to the BLES withdrawal/abandonment process or similar new withdrawal/abandonment process to apply to non-ILEC carriers or other services is not only unjustified, such new obligations would not comply with existing law.

As such, the Commission’s administrative rules should continue to reflect the current scope and authority over voice service as reflected in existing Rules 4901:1-6-02(C) and (D) and the Commission should reject the Consumer Groups’ proposed revisions to Rules 4901:1-6-21(F) and (G).¹¹

III. Conclusion

Numerous parties in this proceeding have taken issue with provisions (F) and (G) as adopted by the Commission, and notably, they agree with the arguments that the OCTA has raised. Such widespread opposition to these two provisions is telling – those rules have serious legal flaws that multiple industry stakeholders have identified. Incorporating the changes proposed by the Consumer Groups would not bring provisions (F) and (G) into compliance with Ohio law, nor would the changes make those provisions reasonable. The OCTA has

¹⁰ Consumer Groups Application for Rehearing at 8. *See, also*, Consumer Groups Application for Rehearing at 9, wherein they contend that the “same process” for abandoning basis service should apply to the provider of voice service.

¹¹ Existing Rules 4901:1-6-02(C) and (D) specify the current, lawful scope of regulation over the voice services referenced, and should remain unchanged. In other words, those rules should not impose greater regulatory obligations on voices services than Ohio law permits, just as argued for Rules 4901:1-6-21(F) and (G).

recommended that provisions (F) and (G) be removed and the other rehearing arguments reinforce that recommendation. For all of the reasons set forth above, the Consumer Groups' fourth and fifth assignments of error should be rejected by the Commission. Provisions (F) and (G) should be removed from the Rule 4901:1-6-21.

Respectfully submitted,

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Summary: Memorandum Contra the Consumer Groups' Application for Rehearing
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