

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review)
of Chapter 4901:1-6 of the Ohio)
Administrative Code, Regarding Telephone)
Company Procedures and Standards.)

**SECOND APPLICATION FOR REHEARING
BY
COMMUNITIES UNITED FOR ACTION,
EDGEMONT NEIGHBORHOOD COALITION,
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL,
OHIO POVERTY LAW CENTER,
PRO SENIORS, INC., AND
SOUTHEASTERN OHIO LEGAL SERVICES**

In its Order in this case, the Public Utilities Commission of Ohio (“PUCO”) issued Draft Rules for providing telephone service to consumers in Ohio.¹ Some of the rules provide considerable consumer protections. On rehearing,² the PUCO improved some consumer protections regarding telephone companies’ withdrawal of basic service. Communities United for Action, Edgemont Neighborhood Coalition, the Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (collectively, “Consumer Groups”) are appreciative of the PUCO’s efforts to protect consumers.

However, two matters in the Entry need to be addressed on further rehearing to adequately protect consumers. Consumer Groups file this Second Application for Rehearing because the Entry is unreasonable in the following respects:

¹ Finding and Order (November 30, 2016) (“Order”).

² Second Entry on Rehearing (April 5, 2017) (“Entry”). Because the PUCO issued the rules as “draft” rules, they will be referred to herein as “Draft Rule ____.”

1. The PUCO unreasonably allowed telephone companies to object to petitions filed on behalf of customers under Draft Rule 21(C), which could needlessly impede the PUCO's statutorily required investigation to find voice service for customers who have no alternatives to their telephone company's basic service.
2. Draft Rule 21(B)(1) unreasonably places customers at risk for unlawful loss of their basic service because the rule does not require submission of a *final* order from the Federal Communications Commission ("FCC") giving the telephone company the requisite authorization to withdraw basic service under R.C. 4927.10(A).

The grounds for this Second Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

MEMORANDUM IN SUPPORT

I. INTRODUCTION

In this proceeding, the PUCO is reviewing rules that affect consumers' rights in their dealings with telephone companies. Ohio law and PUCO rules set out those rights.³

After receiving comments and reply comments on rules proposed by the PUCO Staff, the PUCO issued its Order adopting draft telephone rules on November 30, 2016. Applications for rehearing of the Order were filed on December 30, 2017, and oppositions to the applications for rehearing were filed on January 9, 2017. On April 5, 2017, the PUCO issued its Second Entry on Rehearing modifying some rules and denying rehearing on others.⁴

The Draft Rules as modified on rehearing contain many benefits for Ohioans in their dealings with telephone companies. But the PUCO left open two matters that must be addressed to protect consumers from potential harm. In the Entry, the PUCO for the first time allowed telephone companies to object to a petition filed on behalf of a customer who does not have reasonable and comparatively priced alternative voice

³ R.C. Chapter 4927; Ohio Adm. Code Chapter 4901:1-6.

⁴ On January 25, 2017, the PUCO issued its first Entry on Rehearing granting rehearing for the purpose of giving itself more time to consider the issues.

service available.⁵ In Draft Rule 21(B)(1), the PUCO did not specify that a telephone company wishing to withdraw basic service must provide a copy of the *final* FCC order authorizing removal of the interstate access component of the company's basic service. For the reasons discussed below, the PUCO should grant Consumer Parties rehearing on these issues.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after issuance of a PUCO order, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Consumer Groups participated in this proceeding by filing comments, reply comments, an application for rehearing of the Order, and a memorandum contra other applications for rehearing.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

In considering an application for rehearing, R.C. 4903.10 provides that "the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear." The statute also provides: "If, after such rehearing, the commission is of the opinion that the original

⁵ Entry, ¶ 71.

order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” The statutory standard to modify the Order is met here.

III. ERRORS

Assignment of Error No. 1: The PUCO unreasonably allowed telephone companies to object to petitions filed on behalf of customers under Draft Rule 21(C), which could needlessly impede the PUCO’s statutorily required investigation to find voice service for customers who have no alternatives to their telephone company’s basic service.

Under R.C. 4927.10(B), when a telephone company seeks to withdraw basic service a customer who has no reasonable and comparatively priced alternative voice service available can file a petition asking for PUCO assistance. In its Order, the PUCO stated that the petition must be filed by the customer or the customer’s legal counsel.⁶

On rehearing, the PUCO agreed with Consumer Groups that a petition filed by a customer under R.C. 4927.10(B) is not a formal application, but instead is a notice filing.⁷ The PUCO ruled that an authorized representative other than legal counsel may file a petition on a customer’s behalf. The PUCO amended Draft Rule 21(C) accordingly.⁸ Consumer Groups appreciate that the PUCO added this important consumer protection.

But at the same time the Entry added an unnecessary and potentially burdensome element to the process for assisting consumers who are losing their basic service through no fault of their own. While allowing customers to file a petition through an authorized

⁶ Order, ¶ 196. The requirement for filing a petition through legal counsel was only in the Order, not in the Draft Rules adopted by the Order.

⁷ Entry, ¶ 71.

⁸ *Id.*

representative, the PUCO stated that “an ILEC may object to the filing of a petition to the extent that it believes that the petition is not filed by an authorized representative.”⁹

Allowing a telephone company to object to a petition submitted on behalf of a customer is unreasonable, especially where the credentials of the customer’s representative is the only grounds for the challenge.

The Entry creates an unnecessary intrusion into the process the General Assembly established to protect consumers who are losing basic service through no fault of their own. Allowing telephone companies to object to a petition filed on behalf of a customer does not enhance the process. The PUCO is capable of scrutinizing petitions filed on behalf of customers and determining whether they were filed by an authorized representative. The telephone company’s role should be limited to cooperating with the PUCO in its investigation.

In addition, the compressed timeframe in the statutory process necessitates that telephone companies should not be allowed to object to a petition filed on behalf of a customer. The PUCO has only 90 days to complete its investigation and determine whether a reasonable and comparatively priced voice service is available at the petitioning customer’s home.¹⁰ This will likely be a difficult and time-consuming task, especially if numerous customers either file petitions seeking PUCO assistance or are identified by the Collaborative as being without a reasonable and comparatively priced alternative voice service.¹¹ Telephone company objections to customer petitions would

⁹ *Id.* As with the legal counsel requirement in the Order, this element is not included in Draft Rule 21(C).

¹⁰ R.C. 4927.10(B)(1).

¹¹ R.C. 4927.10(B).

likely impede this process, making fulfillment of the PUCO's duty under the statute more difficult.

Petitions submitted on behalf of customers under Draft Rule 21(C) should be fairly and timely processed without telephone company interference. The PUCO's Entry would unreasonably allow telephone companies to interfere in and delay the process by filing objections against petitions submitted on behalf of customers by their authorized representatives. The PUCO should modify its Entry so that telephone companies may not challenge petitions submitted on behalf of customers by their authorized representatives under Draft Rule 21(C).

Assignment of Error No. 2: Draft Rule 21(B)(1) unreasonably places customers at risk for unlawful loss of their basic service because the rule does not require submission of a *final* order from the Federal Communications Commission giving the telephone company the requisite authorization to withdraw basic service under R.C. 4927.10(A).

R.C. 4927.10(A) allows a telephone company to begin the 120-day process for withdrawing basic service if the FCC adopts an order allowing the company to withdraw the interstate access component of its basic service. Draft Rule 21(B)(1) requires a telephone company seeking to abandon basic service to provide the PUCO with a copy of the FCC order authorizing the company to withdraw the intrastate access portion of its basic service. The PUCO was correct in rejecting industry arguments against the rule.¹² But the rule should go further and specify that the FCC order submitted to the PUCO must be a final order.

¹² Entry, ¶ 66.

As the PUCO recognized, “At a minimum, a written FCC decision is necessary for the purpose of certainty as to the formal action taken by the agency.”¹³ But only a *final* FCC order authorizing removal of the interstate access component of basic service would provide a telephone company with the requisite statutory authority to begin the process of withdrawing customers’ basic service. Although the PUCO discussed the finality of FCC orders in the Entry,¹⁴ it did not require the telephone company withdrawing basic service to submit a final FCC order. Rather, the Entry states only that “a written FCC decision is necessary for the purpose of certainty as to the formal action taken by the agency.”¹⁵ Draft Rule 21(B)(1) also does not require submission of a final FCC order to the PUCO.

Consumer Groups noted that, like the PUCO, the FCC has a reconsideration process for its initial orders.¹⁶ Petitions for reconsideration of the FCC’s decision in a non-rulemaking proceeding, or the FCC staff’s decision by delegated authority, must be filed within 30 days after public notice of the decision.¹⁷ In addition, the FCC may reconsider the decision on its own motion within 30 days after public notice of the action.¹⁸ The time for filing reconsideration petitions generally begins on the release date,¹⁹ i.e., the date the written order is made available to the public.

¹³ *Id.*, ¶ 67.

¹⁴ *Id.*, ¶ 65.

¹⁵ *Id.*, ¶ 67.

¹⁶ Consumer Groups Memorandum Contra (January 9, 2017) at 15-16.

¹⁷ 47 C.F.R. §§1.106(f), 1.104(b).

¹⁸ 47 C.F.R. §1.108.

¹⁹ 47 C.F.R. §§1.4(b)(2) and (4).

The 120 days for withdrawing basic service should not begin until the telephone company provides the PUCO with a final FCC order (i.e., an order on reconsideration or one for which no petitions for reconsideration have been filed) authorizing the company to remove the interstate access component of its basic service. Consumers could be harmed if a telephone company is allowed to withdraw basic service before the reconsideration process at the FCC is complete.

Should the FCC reverse its initial ruling on reconsideration, the telephone company would not have the requisite statutory authority to withdraw basic service. If the 120-day withdrawal process had already begun before the FCC reversed its initial ruling, customers might have needlessly sought out alternative providers. This would be a waste of time and expense for customers, and for the PUCO if affected customers who have no alternative voice service available file petitions with the PUCO or are identified by the Collaborative. In addition, should the FCC take more than 120 days to reverse its initial ruling on reconsideration, customers might unlawfully lose their basic service and have to pay more for an alternative voice service.²⁰

The Entry would allow consumers to be harmed, and thus is unreasonable. Draft Rule 21(B)(1) should be modified to require that a telephone company giving 120 days' notice that basic service is being withdrawn must submit a final FCC order, i.e., an order on reconsideration or one for which no petitions for reconsideration have been filed.

²⁰ Under Draft Rule 1(BB), a reasonable and comparatively priced alternative voice service could cost 20 percent more than the incumbent telephone company's basic service.

IV. CONCLUSION

Consumer Groups appreciate the PUCO's efforts to protect consumers in their dealings with telephone companies. However, the consumer protections in the Draft Rules as modified in the Entry should be enhanced. In order to more adequately protect consumers, the PUCO should grant Consumer Groups rehearing and modify its Entry as recommended herein.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Second Application for Rehearing was served on the persons stated below via electronic transmission this 5th day of May 2017.

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Summary: App for Rehearing Second Application for Rehearing by Communities United for Action, Edgemont Neighborhood Coalition, The Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc, and Southeastern Ohio Legal Services electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.