

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Commission's)
Investigation of the Financial Impact)
of the Tax Cuts and Jobs Act of 2017)
on Regulated Ohio Utility Companies.) Case No. 18-0047-AU-COI

COMMENTS OF THE OHIO TELECOM ASSOCIATION

Scott Elisar (Reg. No. 0081877)
(Counsel of Record)
MCNEES WALLACE & NURICK LLC
21 East State Street, 17TH Floor
Columbus, OH 43215
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
selisar@mwncmh.com
(willing to accept service by e-mail)

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ATTORNEYS FOR THE OHIO TELECOM ASSOCIATION

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I. INTRODUCTION

On January 1, 2018, provisions of the Tax Cuts and Jobs Act of 2017 ("TCJA") became effective. One of those provisions lowers the federal corporate income tax rate to 21%. The Public Utilities Commission of Ohio opened this investigation on January 10, 2018 "to study the impacts of the [TCJA] on the Commission's jurisdictional rate-regulated utilities, and determine the appropriate course of action to pass benefits on to ratepayers." Entry, ¶ 1 (Jan. 10, 2018). It also ordered rate-regulated utilities to establish a deferred liability to record the estimated reduction in federal income tax. *Id.*, ¶ 7.

As state policy recognizes, telephone companies operate in a competitive market. R.C. 4927.02(A)(3). Although telephone companies remain subject to the jurisdiction of the Commission, their rates and accounting practices are not generally regulated by the Commission under the traditional requirements applicable to other utilities. Further, the Commission has previously recognized that some telephone companies, because their prices are market driven, would be inappropriate subjects for tax-related price adjustments. Accordingly, the Commission should refrain from requiring these companies to reduce prices in response to the change in federal corporate income tax rate or to record the effect of the tax rate reduction on their books.

II. TELEPHONE COMPANIES' PRICES ARE MARKET BASED AND ARE NOT TIED TO TRADITIONAL COST OF SERVICE RATE MAKING

A corporation or other entity is a telephone company “when engaged in the business of transmitting telephonic messages to, from, through, or in this state.” R.C. 4905.03. Unless otherwise exempted, a telephone company is a public utility and subject to the Commission’s regulation. R.C. 4905.02 and 4905.04 to 4905.06.

Although telephone companies are subject to Commission jurisdiction, the Commission’s rate setting authority differs considerably from that applicable to other utilities.

For gas, electric, and water utilities, the Commission applies a traditional regulatory formula to set base rates. The Commission’s price setting authority under traditional rate setting methods requires the public utility to file an application to increase or lower its rates. R.C. 4909.18. In an application to increase rates, the Commission applies a cost based formula to determine if there is a revenue deficiency and establish an amount of the increase. R.C. 4909.15. Within that formula, the Commission provides for the explicit recognition for the recovery of federal corporate income taxes and tax normalization. See R.C. 4909.15(A)(4) and Rule 4901-7-01 and Appendix (Standard Filing Requirements).

The telephone “business,” however, has undergone significant change in the last thirty years. Recognizing that telecommunications is no longer a monopoly service, the General Assembly with the enactment of Senate Bill 162 and House Bill 64 significantly curtailed the Commission’s role in setting prices charged by telephone companies.

The Commission, with limited exceptions, “has no authority over ... the service rates, terms, and conditions of telecommunications services provided to end users by a telephone company.” R.C. 4927.03(D).

While tariff provisions remain in effect for certain services, the Commission does not set rates for services, and telephone companies may change rates by application and compliance with customer notice requirements. R.C. 4927.15, 4927.16, and 4927.17; Chapter 4901:1-6, Ohio Admin. Code.

The important exception is the pricing of basic local exchange service.¹ Under R.C. 4927.12(B), a telephone company that is an incumbent local exchange carrier, on not less than thirty days' notice, can alter its rates for basic local exchange service. Any upward adjustment in the rate, however, is limited to once a year and cannot exceed \$1.25 per account per month if the particular exchange qualifies for alternative rate regulation. R.C. 4927.12(C)(2). To qualify for alternative rate regulation, the incumbent local exchange carrier must demonstrate that two or more alternative providers offer in the exchange area competing service to the basic local exchange service offered by the incumbent local exchange carrier. R.C. 4927.12(C)(3)(a).

Under this regime, there is no tie to the cost of providing basic local exchange service. Because the Commission's traditional rate setting authority has been repealed by R.C. 4927.03 and 4927.12, the ability to identify the effect of the changes in the federal corporate income tax rate by reviewing a telephone company's cost of service is long gone. Instead, the telephone companies respond to competitive forces and adjust rates to meet competition. As costs such as federal corporate income tax changes are incorporated into competitive prices, telephone companies will respond or lose customers. Accordingly, the limits on price setting by the Commission do not afford a

¹ This statement leaves to the side the pricing of unbundled network elements. Pricing for network elements may not be "inconsistent with or prohibited by federal law ... and shall comply with federal law, including federal regulation, in establishing ... pricing." R.C. 4927-16(B).

basis for the Commission to adjust prices in response to the changes in the federal corporate income tax rate.

III. AS IT DID IN 1987, THE COMMISSION SHOULD ADOPT AN APPROACH THAT RECOGNIZES THAT TELEPHONE COMPANY PRICES ARE MARKET BASED AND EXEMPT THESE COMPANIES FROM THIS INVESTIGATION

A decision to refrain from ordering adjustments to telephone company prices on file with the Commission would be consistent with the Commission's approach to public utilities subject to market based pricing when federal income tax rates were reduced under the Tax Reform Act of 1986.

Following the enactment of the Tax Reform Act of 1986, the Chairman of the Commission sought by letter information on the effect of the reduction in the federal corporate income tax rate from all public utilities. Subsequently, the Commission opened an investigation. *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Reform Act of 1986 on Regulated Ohio Utility Companies*, Case No. 87-831-AU-COI, Entry (June 9, 1987). In the first entry in the case, the Commission noted that it was addressing or had addressed the tax rate reduction in several rate cases, that several public utilities' rates were unaffected by the tax rate change, and that three telephone companies were losing revenue due to reductions in intra-LATA toll rates. *Id.*, ¶ 3. Because some public utilities failed to respond to the Chairman's letter, the Commission's Staff recommended that the non-responding companies be directed to file for a reduction in rates or show cause why they should not. The Staff's recommendation for the show cause order, however, did not extend to radio common carriers, inter-exchange telephone companies, or cellular companies "because their rates are basically driven by competitive pricing practices and market conditions." *Id.*, ¶ 4. In its order, the Commission agreed to

exempt the companies subject to competition from being required to file an application to reduce rates or show cause why they should not. *Id.*, first ordering paragraph.

The Commission's decision in the 1987 investigation should guide it in this proceeding as well. As noted above, telephone companies generally are no longer subject to cost of service regulation as to any of their prices. Because their pricing is largely market driven, competitive pricing practices and market conditions will dictate the amount and timing of the effects of the federal corporate tax rate changes on their prices. No Commission action is needed or authorized.

IV. THE COMMISSION SHOULD CLARIFY THAT THE ORDER TO RECORD ON A DEFERRED LIABILITY FOR THE ESTIMATED REDUCTION IN FEDERAL CORPORATE INCOME TAX DOES NOT APPLY TO TELEPHONE COMPANIES

In its Entry initiating this investigation, the Commission directed rate regulated public utilities "pursuant to [its] authority under R.C. 4905.13, to record on their books as a deferred liability, in an appropriate amount, the estimated reduction in federal income tax resulting from the TCJA." Entry, ¶ 7 (Jan. 10, 2018).

As noted above, the Commission does not regulate the rates of telephone companies subject to its jurisdiction. To assure clarity, the Commission should clarify that this order does not apply to telephone companies subject to its jurisdiction.

If the Commission intended to extend the order to record a deferred liability to telephone companies, the Commission should vacate that order because the order cannot be extended to a telephone company.

R.C. 4905.13 sets out the Commission's authority to establish a system of accounts and the manner in which those accounts shall be kept. Under R.C. 4927.03(C), however, "[f]or purposes of section 4927.01 to 4927.21 of the Revised Code, section[] ...

4905.13 ... of the Revised Code [does] not apply to a telephone company or, as applicable, to an officer, employee, or agent of such company or provider, except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21.”

In this instance, there is no necessity justifying the Commission’s directive to telephone companies to record a deferred liability. The deferred liability would not be a basis to adjust retail rates since the Commission has no authority to dictate the rates of a telephone company other than to determine if the telephone company may increase a charge for basic local exchange service. In that limited respect, the determination whether such an increase is lawful is not based on any cost, but rather on whether a particular exchange is subject to competition. Since consideration of the tax decrease is not necessary to determine telephone company pricing, the Commission is without authority under R.C. 4905.13 to order telephone companies to book a deferred liability.

V. CONCLUSION

The state telecommunications policy provides that Ohio will “[r]ely on market forces, where they exist, to maintain reasonable service levels for telecommunications services at reasonable rates.” R.C. 4927.02(A)(3). Based on that policy, the General Assembly has significantly narrowed the Commission’s authority to authorize and adjust the retail prices charged by telephone companies, and prices charged by telephone companies are no longer determined by a cost-based rate making formula. As a result, the Commission should refrain from investigating the effect of the recent reduction of the federal corporate income tax rate on telephone company prices. Further, the Commission should vacate the order directing telephone companies to record a deferred liability because the Commission lacks authority to do so.

Respectfully submitted,

/s/ Scott Elisar

Scott Elisar (Reg. No. 0081877)

(Counsel of Record)

MCNEES WALLACE & NURICK LLC

21 East State Street, 17TH Floor

Columbus, OH 43215

Telephone: (614) 469-8000

Telecopier: (614) 469-4653

selisar@mwncmh.com

(willing to accept service by e-mail)

ATTORNEYS FOR THE OHIO TELECOM ASSOCIATION

CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon interested parties on February 15, 2018.

/s/ Scott Elisar

Scott Elisar

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Summary: Comments Comments of The Ohio Telecom Association electronically filed by Scott E. Elisar on behalf of Ohio Telecom Association