

**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,)	Case No. 14-1554-TP-ORD
Regarding Telephone Company)	
Procedures and Standards.)	

**CONSUMER PROTECTION COMMENTS REGARDING LOCAL
TELEPHONE COMPANY ABANDONMENT OF CONSUMERS'
ESSENTIAL 9-1-1 EMERGENCY AND BASIC LOCAL TELEPHONE
SERVICES**

**BY
ADVOCATES FOR BASIC LEGAL EQUALITY, INC.
LEGAL AID SOCIETY OF COLUMBUS
OFFICE OF THE OHIO CONSUMERS' COUNSEL
OHIO POVERTY LAW CENTER
PRO SENIORS, INC.
SOUTHEASTERN OHIO LEGAL SERVICES**

I. INTRODUCTION

Ohioans' access to basic telephone service and 9-1-1 emergency services is in the public interest and is protected by Ohio law and federal rules.¹ Ohioans rely on the most basic of telephone service to communicate with family, doctors, emergency services, and others. And with the ongoing pandemic, consumers rely especially on this service more than ever. For nearly one *million* Ohio consumers, there is no access to broadband or broadband based voice over

¹ R.C.4927.02(A)(1); R.C. 4927.01(A)(1)(b)(iv); 47 C.F.R. §54.101(a)(1).

internet protocol (“VoIP”) service.² To make matters worse, many Ohioans in rural areas lack adequate cellular service to use in lieu of basic wired telephone service.³

Protecting this essential phone service furthers the public interest by safeguarding the public’s access to emergency services, medical care, family and friends, and other community connections whenever needed. Rules of the Public Utilities Commission of Ohio (“PUCO”) help promote consumers’ access to basic service and 9-1-1 service. The rule should not be amended to reduce consumers’ access to essential services.

The Consumer Parties that seek consumer protection through these comments are as follows: the Office of the Ohio Consumers’ Counsel (“OCC”) is the statutory representative of Ohio’s approximately 4.5 million residential utility customers; Advocates for Basic Legal Equity is a nonprofit law firm established 50 years ago to ensure that the most vulnerable people in our communities have the same access to justice as people and companies that can afford to retain an attorney; the Legal Aid Society of Columbus works to assist low-income and elderly individuals living in Columbus and Central Ohio combat unfairness and injustice and to help people rise out of poverty; the Ohio Poverty

² Innovate Ohio, *Ohio Broadband Strategy*, (last accessed September 1, 2021) (For more than 300,000 households in Ohio representing close to 1 million Ohioans, a lack of access to high-speed internet is a critical barrier. In some parts of Ohio, the connectivity required for children to do computer-based homework and for adults to look for a new job or access online education or training programs does not exist. Ohio’s most recent mapping efforts demonstrates that many Ohioans, particularly in rural areas, face connectivity issues”).

³ Jeanne Whalen, *Next Infrastructure Challenge: Fixing Rural Cellphone Service*, *The Washington Post* (August 11, 2021) (“[r]ural telecom companies say even fiber links won’t fix another big communications problem in their communities — a lack of cellphone towers that leaves many residents and first-responders with extremely poor mobile service.”).

Law Center works to reduce poverty and increase justice by protecting the legal rights of Ohioans living in poverty; ProSeniors provides education, advice, advocacy, representation and justice for seniors in Ohio all provided at no cost to clients; and Southeastern Ohio Legal Services is an LSC-funded legal services program whose mission is to act as general counsel to a client community residing throughout thirty rural counties in southeast Ohio and, as such, provide the highest quality of legal services to its clients toward the objective of enabling poor people to assert their rights and interests.

In this case, the PUCO previously conducted a rulemaking, but never issued a decision addressing rules. The PUCO now seeks comment on proposed changes to rule Ohio Adm. Code 4901:1-6-21.⁴ This rule determines what happens when a telephone company files to abandon basic local telephone service, including access to emergency 9-1-1 service. The Consumer Parties support the PUCO's proposals in this regard—but recommend further changes to the modified proposed rules to protect consumers.⁵

⁴ Case No. 14-1554-TP-ORD, Entry, Attachment A (August 25, 2021) (“Proposed Rules”).

⁵ Specific changes to rules are underlined in these Comments.

II. RECOMMENDATIONS

- A. The definition of “reasonable and comparatively priced voice service” in proposed Rule 4901:1-6-21 (A) is unreasonably vague. The proposed rule relates to which threshold would apply for determining that a service is presumptively deemed “[comparatively] priced, subject to rebuttal.”**

In proposed rule 4901:1-6-21(A),⁶ the PUCO defined “reasonable and comparatively priced service” as a voice service that incorporates the definition set forth in R.C. 4927.10(B)(3). In addition, the proposed rule states that a voice service is presumptively deemed “comparatively” priced, subject to rebuttal, if the rate does not exceed either (1) the incumbent carrier’s basic service rates by more than 20 percent or (2) the Federal Communications Commission’s (“FCC”) urban rate floor as defined in 47 C.F.R. §54.313(a)(2). This definition is unreasonable because it is vague regarding which threshold would apply for determining that a service is presumptively deemed “comparatively” priced (subject to rebuttal).

Specifically, would consumers’ basic voice service that is available at the FCC’s urban rate floor, but more than 20 percent above the incumbent carrier’s basic service rate, be presumptively deemed a “comparatively” priced rate? For example, what if the rate were 40 percent above the incumbent carrier’s basic service rate? Or 60 percent? In those situations, affected consumers would experience a considerable rate shock under the new rate. This definition of “reasonable and comparatively priced service” should be clarified and strengthened to protect potentially affected residential consumers.

⁶ Proposed Rules at 1.

Therefore, Rule 4901:1-6-21(A) should be revised (as underlined) as follows:

The collaborative process established under section 749.10 of amended substitute House Bill 64 of the 131st General Assembly will review the number and characteristics of basic local exchange service customers, evaluate what alternative reasonable and comparatively priced voice services are available to residential BLES customers and the prospect of the availability of a reasonable and comparatively priced voice service where none exist. This will be done for the purpose of identifying any exchanges or residential BLES customers with the potential to not have access to a reasonable and comparatively priced voice service. For purposes of rule 4901:1-6-21 of the Administrative Code, “reasonable and comparatively priced voice service” is a voice service that satisfies the definition set forth in division (B)(3) of section 4927.10 of the Revised Code. A voice service is presumptively deemed comparatively priced, subject to rebuttal, if the rate does not exceed the lesser of: (1) the incumbent local exchange carriers’ (ILEC) BLES rate by more than twenty percent or (2) the federal communications commission’s (FCC) urban rate floor as defined in 47 C.F.R. 54.313(a)(2).

This change will remove any ambiguity in the draft rule and protect residential customers, including low-income customers, from possible exorbitant rate increases for alternative voice service.

B. The customer notices concerning withdrawal of basic service or discontinuance of voice service should be mailed to consumers separately from their telephone bills and should be prominently identified as a notice of service withdrawal or discontinuance.

The PUCO proposes rules concerning notice to customers when a telephone company is withdrawing or discontinuing basic voice service to consumers. Proposed Ohio Adm. Code 4901:1-6-21(B)(2) provides a telephone company withdrawing basic voice service to customers must give the customers notice no later than the day the notice for withdrawal of BLES is filed with the

PUCO. This will give affected consumers at least 120 days' notice before the incumbent telephone company abandons or withdraws service.

Monthly bills, including electronic bills, may contain numerous inserts and other messages. Because of this jumble of communications, a notice that the customers' basic service will soon be withdrawn might be overlooked. The PUCO should require that telephone companies send the 120-day notice required under the rule to customers as a separate communication from the monthly bill. The envelope or subject line of the email should prominently inform customers that their basic service will soon be withdrawn. And for further protection, consumers should be reminded—separate from their monthly bill—that their telephone company is ending service every thirty days until the discontinuance of service is effective.

OCC recommends the following changes to proposed Ohio Adm. Code 4901:1-6-21(B)(2):

A copy of the initial notice of the withdrawal or abandonment of BLES sent to all affected customers no later than the day the notice for the withdrawal of BLES is filed with the commission to ensure that affected customers have at least one hundred and twenty days' notice before the ILEC withdraws or abandons BLES. Additional notice shall be provided to consumers every thirty days until the withdrawal or abandonment is final. The notices ~~has to~~ must include a provision stating that those affected customers unable to obtain reasonable and comparatively priced voice service have the right to file a petition with the commission and the earliest date upon which the affected customer's BLES will be discontinued. The notices ~~needs to~~ shall provide the affected customers with the commission's and the office of the Ohio consumers' counsel's (OCC) mailing address, toll-free telephone number, and website address for additional information regarding the notice of the withdrawal or abandonment of BLES and filing of a petition. The notices shall be sent to the customer in a communication separate from the customer's monthly bill and shall be prominently

identified on the envelope or the subject line of the electronic communication as a notice that the customers' BLES is being withdrawn. For purposes of rule 4901:1-6-21 of the Administrative Code, "affected customers" means a residential customer receiving BLES that will be discontinued by the withdrawing or abandoning ILEC.

Communications with customers about this important imminent change to their basic telephone service and 9-1-1 emergency services must be required by the PUCO to be done in a manner that clearly and effectively puts consumers on notice of this change. The PUCO should protect consumers by requiring notice to be provided in a separate communication from the bill every thirty days until the abandonment or withdrawal is effective.

- C. Draft Rule 21(B)(1) unreasonably places customers at risk for unlawful withdrawal 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. But the rule should go further and specify that the FCC order submitted to the PUCO must be a *final* order.

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. The proposed rule does not require the telephone company withdrawing basic service to submit a final FCC order. Rather, the draft rule states only that “A copy of the FCC order that allows the ILEC to withdraw the interstate-access component of its BLES under 47 U.S.C. 214 or other evidence that the FCC has automatically approved the ILEC’s application to withdraw the interstate access component of its BLES.” Draft Rule 21(B)(1) also does not require submission of a final FCC order to the PUCO.

Like the PUCO, the FCC has a reconsideration process for its initial orders.⁷ 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.⁸ In addition, the FCC may reconsider the decision on its own motion within 30 days after public notice of the action.⁹ The time for filing reconsideration petitions generally begins on the release date,¹⁰ i.e., the date the written order is made available to the public.

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

⁷ 47 C.F.R. §§1.106(f), 1.104(b).

⁸ *Id.*

⁹ 47 C.F.R. §1.108.

¹⁰ 47 C.F.R. §§1.4(b)(2) and (4).

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.¹¹

As written the Rule 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.

III. CONCLUSION

The PUCO's rules should protect consumers when their telephone service is being withdrawn or discontinued. OCC's recommendations will help

¹¹ Under Draft Rule (A), a reasonable and comparatively priced alternative voice service could cost 20 percent more than the incumbent telephone company's basic service.

enhance the consumer protections in the proposed rules. The PUCO should adopt OCC's consumer protection recommendations.

Respectfully submitted,

Bruce Weston (0016973)
Ohio Consumers' Counsel

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson (0096598)
Counsel of Record
Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
Telephone: [Wilson]: (614) 466-1292
ambrosia.wilson@occ.ohio.gov
(willing to accept service by e-mail)

/s/ Ellis Jacobs
Ellis Jacobs (0017435)
Advocates for Basic Legal Equality, Inc.
130 West Second St., Ste 700 East
Dayton, OH 45402
Direct: (937) 535-4419
Fax: (937) 535-4600
ejacobs@ablelaw.org
website: www.ablelaw.org
(will accept service via e-mail)

/s/ Susan Jagers
Susan Jagers (0061678)
Ohio Poverty Law Center
1108 City Park Ave. Suite 200
Columbus, OH 43206
614-824-2501
sjagers@ohiopoveritylaw.org
(will accept service via e-mail)

/s/ Peggy P. Lee
Peggy P. Lee #0067912
Senior Staff Attorney II
Southeastern Ohio Legal Services
964 E State St
Athens, OH 45701
740.594.3558
Direct: 614.827.0516
Fax: 740.594.3791
plee@seols.org
(will accept service via e-mail)

/s/ Melissa Baker Linville
Melissa Baker Linville (0088163)
Staff Attorney
The Legal Aid Society of Columbus
1108 City Park Ave.
Columbus, OH 43206
(614) 737-0155
Mlinville@columbuslegalaids.org
(will accept service via e-mail)

/s/ Michael Walters
Michael Walters (0068921)
Legal Hotline Managing Attorney
Pro Seniors, Inc.
7162 Reading Road, Suite 1150
Cincinnati, OH 45237
Telephone: (513) 458-5532
mwalters@proseniors.org
(will accept service via e-mail)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served on the persons stated below via electronic transmission this 1st day of September 2021.

/s/ Ambrosia E. Wilson
Ambrosia E. Wilson
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

SERVICE LIST

John.jones@ohioAGO.gov
glpetrucci@vorys.com
smhoward@vorys.com
dhart@douglasshart.com
david.vehslage@verizon.com

Attorney Examiners:

Jay.agranoff@puc.state.oh.us
Jeffrey.jones@puc.state.oh.us

Patrick.crotty@cinbell.com
Jk2961@att.com
mo2753@att.com
dt1329@att.com
selisar@mwncmh.com
mpritchard@mwncmh.com
mjsettineri@vorys.com
matthew.myers@upnfiber.com
glenn.richards@pillsburylaw.com
cblend@porterwright.com

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