

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

## I. INTRODUCTION

The OTA and the OCTA ask the PUCO to diminish or eliminate protections for Ohioans when their telephone service is withdrawn or discontinued. The PUCO should reject these anti-consumer proposals. The PUCO should affirm its 3rd Finding and Order regarding the OTA and OCTA claims. The applications for rehearing filed by OTA and OCTA should be denied.

In their applications for rehearing,<sup>1</sup> the Ohio Telecom Association (“OTA”) and the Ohio Cable Telecommunications Association (“OCTA”) rehash the same anti-

<sup>1</sup> Application for Rehearing of the Ohio Telecom Association (February 11, 2022) (“OTA’s AFR”); Application for Rehearing of the Ohio Cable Telecommunication Association (February 11, 2022) (OCTA’s AFR).

consumer arguments they made in their comments and reply comments in this case.<sup>2</sup> The Public Utilities Commission of Ohio (“PUCO”) correctly ruled against these arguments and should do so again here. The PUCO should deny the OTA’s and OCTA’s applications for rehearing.

## II. ARGUMENT

**A. The PUCO has authority to define “reasonably and comparatively priced voice service.” Therefore, the PUCO should deny the OTA’s and OCTA’s Applications for Rehearing that incorrectly rely on O.A.C. 4901:1-6-21(A) to support a theory that the PUCO lacks such authority.**

The OTA requests that the PUCO grant rehearing and conform rule O.A.C. 4901:1-6-21 to OTA’s misinterpretation of Ohio law. The OTA would delete the last sentence of division (A) and the entirety of divisions (F) and (G).<sup>3</sup> The OTA presents two arguments against the PUCO’s Third Supplemental Finding and Order in this case.

First, the OTA argues that the PUCO has no authority to define “reasonably and comparatively priced voice service” in a way that varies from R.C. 4927.10 (B)(3).<sup>4</sup>

Second, the OTA argues that the PUCO “...extended notification and continuation of service obligations to telephone companies other than incumbent local exchange carriers including those providing voice grade services with voice over internet

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<sup>2</sup> Comments of the Ohio Telecom Association (September 1, 2021) (“OTA Comments”); Comments of the Ohio Cable Telecommunications Association (September 1, 2021) (“OCTA Comments”); Reply Comments of the Ohio Telecom Association (September 10, 2021) (“OTA Reply Comments”) Reply Comments of the Ohio Cable Telecom Association (September 10, 2021) (“OCTA Reply Comments”).

<sup>3</sup> OTA’s AFR at 2.

<sup>4</sup> *Id.* at 1.

protocol service that are seeking to withdraw or abandon voice service in violation of R.C. 4927.07 and 4927.03.”<sup>5</sup>

The OTA is wrong on both counts. The PUCO should again reject the OTA’s arguments and confirm its Third Supplemental Finding and Order.<sup>6</sup>

The Consumer Groups<sup>7</sup> argued that the PUCO Staff’s definition of reasonable and comparatively priced service is unreasonably vague.<sup>8</sup> However, the Consumer Groups do not agree with the OTA and OCTA that the PUCO is without authority to set the definition of what constitutes “reasonably and comparatively priced service.”<sup>9</sup>

As the PUCO noted in its Third Supplemental Finding and Order, R.C. 4927.10 authorizes the PUCO to define the term “reasonable and comparatively priced voice service.”<sup>10</sup> Additionally, R.C. 4927.10 states that the PUCO *shall* define the term to *include* “service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and that it is competitively priced, when considering all the alternatives in the marketplace and their functionalities.”

The PUCO correctly found, contrary to OTA and OCTA arguments, that the statute does not prohibit it from establishing specified benchmarks for the purpose of assessing if a voice service is presumptively deemed competitively priced. Instead, the

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<sup>5</sup> *Id.*

<sup>6</sup> Third Supplemental Finding and Order at (January 12, 2022) (the “3<sup>rd</sup> F&O”).

<sup>7</sup> Advocates For Basic Legal Equality, Inc.; The Legal Aid Society of Columbus; Office Of The Ohio Consumers’ Counsel; Ohio Poverty Law Center; Pro Seniors, Inc.; and Southeastern Ohio Legal Services (jointly, the “Consumer Groups”).

<sup>8</sup> Consumer Groups’ Initial Comments (September 1, 2021) (“Consumer Groups’ Initial Comments”); Consumer Groups’ Reply Comments (September 10, 2021) (“Consumer Groups’ Reply Comments”).

<sup>9</sup> Consumer Groups’ Initial Comments at 4.

<sup>10</sup> 3<sup>rd</sup> F&O at ¶49.

law states that the PUCO must include *at a minimum* “service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and that it is competitively priced, when considering all the alternatives in the marketplace and their functionalities.” The PUCO is a creature of statute<sup>11</sup> and R.C. 4927.10 provides the PUCO’s authority to define “reasonable and comparatively priced voice services.”

Therefore, the PUCO should deny the OTA’s and OCTA’s applications for rehearing. The PUCO has the statutory authority to set the definition for “reasonable and competitively priced voice service.”

**B. The PUCO should deny OTA’s Second Assignment of Error and OCTA’s Assignments of Error 3-6 because the PUCO’s adoption of O.A.C. 4901:1-6-21(F) and (G) was lawful, and furthers consumer protection, by extending notification and continuation of service obligations to non-incumbent telephone companies seeking to withdraw or abandon voice service.**

The OTA’s Second Assignment of Error and OCTA’s Assignments of Error 3-6 argue that the PUCO erred by adopting O.A.C. 4901:1-6-21 (F) and (G).<sup>12</sup> The OTA and OCTA contend that the PUCO’s adoption of this rule unlawfully extends “notification and continuation of service obligations to telephone companies other than incumbent local exchange carriers including those providing voice grade services with voice over internet protocol service that are seeking to withdraw or abandon voice service in violation of R.C. 4927.07 and 4927.03.”<sup>13</sup>

First, OCTA argues that R.C. 4927.03(A) does not authorize new PUCO regulations over voice services and providers, including VoIP.<sup>14</sup> Second, OCTA argues

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<sup>11</sup> See, e.g., *Columbus S. Power Co. v. PUCO*, 67 Ohio St.3d 535, 537 (1993).

<sup>12</sup> OTA’s AFR at 10; OCTA’s AFR at 7.

<sup>13</sup> *Id.*

<sup>14</sup> OCTA’s AFR at 8-9.

the PUCO's reliance on R.C. 4927.03(A) is misplaced and lacks the requisite support of record-based facts.<sup>15</sup> Finally, OCTA argues that an extended reach contradicts the PUCO's recent stated intent to exempt such providers and services from PUCO regulation.<sup>16</sup>

OCTA is wrong on all counts. The PUCO should again reject the OCTA's arguments and confirm its Third Supplemental Finding and Order.<sup>17</sup> The PUCO should deny rehearing on these rule sections for consumer protection.

The PUCO lawfully determined that it should not wait to act until after an injury or fatality to a consumer has occurred for lack of telephone service. Instead, this consumer concern must be addressed in this rule proceeding and prior to the filing of the first notice seeking the withdrawal or abandonment of voice service. Further, the PUCO was correct in finding that "if the loss of access to 9-1-1 service does not implicate the need for this Commission to take action to ensure the public safety and welfare, it is difficult to imagine what other scenario would satisfy the intent of R.C. 4927.03."<sup>18</sup> To protect consumers from loss of access to essential 9-1-1 service, the PUCO should deny the OTA's and OCTA's applications for rehearing. The PUCO acted lawfully to protect consumers and it should affirm its decision.

When residential consumers' only access to 9-1-1 service is via a voice service that is being discontinued, the PUCO should assist the consumers in finding a willing

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<sup>15</sup> *Id.* at 9-13.

<sup>16</sup> *Id.* at 13-15.

<sup>17</sup> 3<sup>rd</sup> F&O at ¶56.

<sup>18</sup> *Id.* at ¶56.

provider of service to their homes.<sup>19</sup> This is what the PUCO Staff proposed in this rule — and it is what the PUCO adopted in its Order. In Joint Consumer Comments, we recommended that the PUCO must assist a telephone company’s basic service consumers in finding a new and willing provider for such service, if a telephone company withdraws basic service.<sup>20</sup> This is because, for consumer protection, residential consumers of the voice service that is being withdrawn should be treated the same as residential consumers of basic service that is being withdrawn. The proposed rule supports that approach.<sup>21</sup> Ohioans’ health and safety should not be jeopardized when their voice service provider would prefer to no longer serve them.<sup>22</sup>

As the PUCO pointed out in its Third Supplemental Finding and Order, , the PUCO must ensure that an incumbent local exchange company’s “residential subscribers will continue to have access to 9-1-1 service subsequent to the ILEC abandoning the offering of basic local exchange services (“BLES”), and even prior to the last voice service provider withdrawing or abandoning voice service.”<sup>23</sup>

### **III. CONCLUSION**

The PUCO’s rules should protect Ohioans when their telephone service is being withdrawn or discontinued. For all the reasons stated above, the OTA’s and OCTA’s applications for rehearing should be denied.

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<sup>19</sup> *Id.*

<sup>20</sup> Consumer Groups’ Initial Comments at 6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 3<sup>rd</sup> F&O at ¶54.

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## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Memorandum Contra was served by electronic transmission upon the parties below this 22nd day of February 2022.

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Summary: Memorandum Memorandum Contra the Applications for Rehearing of The Ohio Telecom Association and The Ohio Cable Telecommunications Association by Advocates for Basic Legal Equality, Inc., The Legal Aid Society of Columbus, Office of The Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., Southeastern Ohio Legal Services electronically filed by Mrs. Tracy J. Greene on behalf of Wilson, Ambrosia E.