

# Orwell Telephone Company

70 SOUTH MAPLE STREET  
P.O. BOX 337  
ORWELL, OHIO 44076-0337  
216-437-6111

DONALD POKORNY, *President*  
ALBERT LEONETTI, *Executive Vice President*  
FRANK LEONETTI, Jr., *Vice President & Secretary*

RECEIVED  
JUL 31 1995  
DOCKETING DIVISION  
PUBLIC UTILITIES COMMISSION OF OHIO

July 28, 1995

Public Utilities Commission of Ohio  
Attention: Ms. Daisy L. Crockron  
Chief, Docketing Division - 10TH Floor  
180 East Broad Street  
Columbus, Ohio 43266-0573

Dear Ms. Crockron:

Re: PUCO Case No. 95-515-TP-ACB  
Robert Slusher - Request for Boundary Change

Enclosed please find the original and ten (10) copies of our MOTION TO DISMISS to be docketed in the abovementioned case.

Please stamp and return the eleventh (11TH) copy for my files. Thank you.

With best regards,

Donald Pokorny

DP/ad

enclosure

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

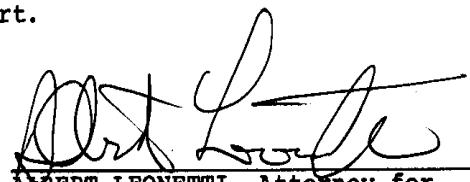
RECEIVED  
JUL 31 1995  
DUCKETING DIVISION  
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of )  
Robert Slusher and Other Subscribers )  
of the Orwell Exchange of Orwell )  
Telephone Company Requesting a )  
Boundary Change. )

Case No. 95-515-TP-ACB

MOTION TO DISMISS

The Orwell Telephone Company respectfully moves the Commission for an order dismissing the Petition herein, for failing to state a claim for which relief can be granted. The reasoning for said Motion is more fully set forth in the attached Memorandum in Support.



ALBERT LEONETTI, Attorney for  
Orwell Telephone Company  
TOWER EAST - SUITE 400  
20600 Chagrin Boulevard  
Shaker Heights, Ohio 44122  
216-751-1000

MEMORANDUM IN SUPPORT

Eight subscribers of the Orwell Telephone Company (Orwell) have filed a Complaint with the P.U.C.O., requesting that the boundary of the exchange providing service to them be changed, thereby moving them to a different exchange.

The matter of a boundary change is governed by O.R.C. 4905.241, 242 and 243. These Statutes require that, before any boundary change can be required, there must be a determination that the service being provided is inadequate. See Fayetteville Telephone Company v P.U.C.O. 10 St. 3d 167.

In this Petition there is no allegation of inadequate service, nor has there been any determination that the service being provided to these customers is inadequate. The whole thrust of the Petition is that petitioners feel it is more costly and inconvenient for them in their present exchange than it would be if they were moved to the next contiguous exchange. The fact that one's service is not as convenient, or is more expensive than his neighbors', is not inadequate service and does not give rise to a right to a boundary change. See Castle v Ohio Bell Telephone Company, Case No. 81-1159-TP-ACB, Opinion and Order of May 19, 1982.

The area where the petitioners are located, based upon the available records, always has been a part of the Orwell Exchange (437) and has always had a different calling area than the Bloomfield exchange (685). The Company has taken no action which would result in these subscribers being treated any differently than any others, or which would subject them to undue hardship. The service they receive is of the highest quality.

From the statements made in the petition that the requested boundary change would eliminate long distance toll charges, it would appear that the real issue is toll service versus local service to Trumbull County exchanges and particularly the Warren, Ohio exchanges and the petitioners' case should be filed as a request for extended area service.

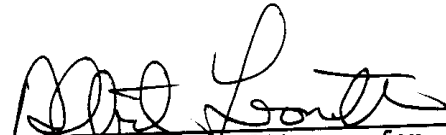
Orwell has map records dating back to 1955, which is prior to the acquisition of the North Bloomfield Telephone Company by Orwell, signed by the management of the North Bloomfield Telephone Company, which shows the same boundary lines as the most recent maps.

It is a fact of life that there must be boundaries, and that someone will be located on or near said boundary. By some people this is perceived as an advantage, by others a disadvantage, but the fact that some people view a boundary as a disadvantage or an inconvenience is not sufficient cause for an order for a boundary change, nor does the P.U.C.O. have jurisdiction to order a boundary change, which is not based upon a finding of inadequate service.

The most recent P.U.C.O. telephone exchange inspection of the Orwell exchange performed by the Commission's staff and filed with this Commission on December 18, 1991 indicated that there were no complaints from the sampled subscribers surveyed and that service, as related to the Commission's standards, in general, was good.

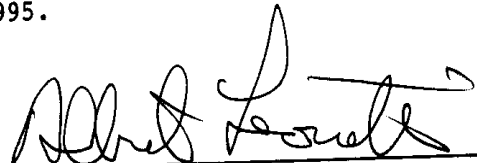
In addition thereto, a similar complaint was filed by all or some of the petitioning parties, on October 15, 1987 docketed as P.U.C.O. Case No. 87-1732-TP-ACB, In the Matter of the Petition of Robert Slusher, Sr., Requesting a Boundary Change, and subsequently substituting Andrew Gill as the spokesperson. A motion to dismiss was filed by Orwell on November 9, 1987, and that motion was granted by this Commission by order dated April 27, 1988, a copy of which is attached as EXHIBIT A and hereby made a part of this Memorandum in Support. Circumstances have not changed and that entry should be controlling in this case.

The Complaint, not being based on inadequate service, and stating no allegation upon which inadequate service could be implied, must fail, and it is respectfully requested that said Petition be dismissed.

  
ALBERT LEONETTI, Attorney for  
Orwell Telephone Company  
TOWER EAST - SUITE 400  
20600 Chagrin Boulevard  
Shaker Heights, Ohio 44122  
216-752-1000

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Dismiss and Memorandum of Support has been served by first class U.S. mail to Robert Slusher, 9937 Penniman Road North, Orwell, Ohio 44076 on July 28, 1995.

  
Albert Leonetti

# EXHIBIT A

BEFORE

## THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of )  
Andrew Gill and Other Subscribers )  
of the Orwell Exchange of Orwell ) Case No. 87-1732-TP-ACB  
Telephone Company Requesting a )  
Boundary Change. )

### ENTRY

The Commission finds:

- 1) On October 15, 1987, a petition was filed with this Commission on behalf of seven subscribers of the Orwell Exchange of Orwell Telephone Company (Orwell) requesting that the pertinent boundary line be changed so that the petitioners would be located in the North Bloomfield Exchange of Orwell Telephone Company. As grounds for complaint, the petitioners allege that, as residents of Bloomfield Township, located in Trumbull County, Ohio, they are being discriminated against by being placed in the Orwell Exchange, which is located primarily in Ashtabula County. Petitioners contend that being made a part of the North Bloomfield Exchange would permit them to call the Warren and Mesopotamia Exchanges toll-free, thus allowing free access to their elementary school, the county sheriff, doctors, assorted businesses, and government agencies. According to the petitioners, the inability to contact these exchanges on a toll-free basis results in the receipt by them of less than adequate telephone service, and high toll charges.
- 2) By Entry dated February 19, 1988, the Attorney Examiner assigned to this matter found that in cases such as this, which seek a change in an exchange boundary, it is essential that the complaint allege the service and facilities of the utility presently providing service to the area in question are inadequate. In addition, the filing also must set forth sufficient facts and arguments addressing that allegation to meet the "reasonable grounds" criterion of Section 4905.26, Revised Code, which is a prerequisite to the scheduling of a public hearing. In the event the record ultimately supports the finding of inadequate service constituting

a violation of Section 4905.22, Revised Code, the Commission would generally afford the serving telephone company a reasonable opportunity to remedy these inadequacies in accordance with Section 4905.381, Revised Code, prior to invoking the various remedial provisions of Sections 4905.241 through 4905.244, Revised Code, which relate, in part, to an alteration of the exchange boundary.

- 3) Also in the February 19, 1988, Entry, it was noted that the Commission has on several occasions observed that neither allegations concerning a purported community of interest with other exchanges nor assertions relating to the high cost of long distance calls to such exchanges will suffice in meeting a complainant's burden of proof in a boundary change request proceeding absent a showing that the quality of telephone service and the facilities provided in the area in question are in some way inadequate. (See Griffith v. United Telephone Co., Case No. 81-1160-TP-ACB, Opinion and Order of May 19, 1982; Castle v. Ohio Bell Telephone Co., Case No. 81-1159-TP-ACB, Opinion and Order of May 19, 1982; Marotta v. United Telephone Co., Case No. 81-244-TP-ACB, Opinion and Order of March 10, 1982).
- 4) Because the petition filed October 15, 1987, only alleged inadequate service in the sense that the petitioners have a purported community of interest with exchanges in Trumbull County, and that long distance service to those exchanges is costly, but not in the sense that the service and facilities provided by Orwell are inadequate, the February 19, 1988, Entry granted the petitioners thirty days to file a supplemental petition setting forth any additional allegations concerning inadequacies in their telephone service and facilities. The Entry, therefore, withheld ruling on an outstanding motion to dismiss filed by Orwell on November 9, 1987, pending receipt of the supplemental petition. (Orwell argues that the issue in this case is local versus toll service, rather than inadequate service, and that consequently, the petition must be dismissed).

- 5) On March 11, 1988, Andrew Gill, the spokesperson for the petitioners, filed a response to the February 19, 1988, Entry. In his response, Mr. Gill outlines the reasons the petitioners believe their service to be inadequate, including the facts that the fire department and elementary schools are long distance, and that the present placement of the exchange boundary places financial hardships on senior citizens, farmers, businesses, and those associated with community activities in North Bloomfield. While Mr. Gill briefly notes that the persons to whom the petitioners place calls have difficulty hearing over the line, he sums up his letter by stating that in his opinion, it is "a crime when a commission and a telephone company will not let a neighborhood be a part of their own community".
  
- 6) The Commission notes that it is not unsympathetic to the plight of these petitioners; however, it is clear that under the circumstances presented, a boundary change is not an appropriate remedy and, therefore, Orwell's motion to dismiss this case must be granted. As set forth in their March 11, 1988, filing, it is evident that the objective of the petitioners' request is to be placed into the North Bloomfield Exchange in order to gain toll-free calling into the Warren and Mesopotamia Exchanges due to ties the petitioners allege to have with those exchanges. Allegations concerning a purported community of interest and assertions relating to the high cost of long distance calls are not sufficient to meet the burden of proof in a boundary change case. A boundary change is reserved for those instances where a group of subscribers is being provided inadequate telephone service or being served by inadequate facilities; allegations of such inadequacies have not been made here. Should they wish to pursue this matter, the Commission encourages the petitioners to file a request for extended area service to the Warren and Mesopotamia Exchanges. While not intended to be a substitute for toll service, extended area service is designed to meet the daily calling requirements of subscribers which cannot properly be met within their own local calling area. From the filings made in

this case, it would seem that a remedy such as extended area service would more adequately speak to the petitioners' concerns than a boundary change.

It is, therefore,

ORDERED, That the motion to dismiss filed by Orwell Telephone Company be granted and this case be dismissed and closed of record. It is, further,

ORDERED, That copies of this Entry be served upon all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas V. Chema  
Thomas V. Chema, Chairman

Ashley C. Brown

Gloria L. Gaylord  
Gloria L. Gaylord

Alan R. Schriber  
Alan R. Schriber

SKW/ksb

Entered in the Journal  
APR 27 1988

A True Copy

Nancy L. Wolpe  
Nancy L. Wolpe  
Secretary