

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)
Western Reserve Telephone Company for)
Approval of an Alternative Form of) Case No. 04-1359-TP-ALT
Regulation Pursuant to Chapter 4901:1-4,)
Ohio Administrative Code.)

FINDING AND ORDER

The Commission finds:

- (1) On August 30, 2004, The Western Reserve Telephone Company (Western Reserve) filed an application for approval of an elective alternative regulation plan. Western Reserve filed the application pursuant to Chapter 4901:1-4, Ohio Administrative Code (O.A.C.).
- (2) Under the elective alternative regulation rules adopted by the Commission, an electing incumbent local exchange carrier (ILEC) has pricing flexibility for services other than basic local exchange service. In exchange for this, a company adopting an elective alternative regulation plan would be required to fulfill a number of important commitments to benefit its customers. Most importantly, the electing company would not be permitted to increase its existing basic local telephone rates and basic Caller ID rates for as long as the company is in the plan. The company also must provide, on demand, high-speed internet access within one and two years of adopting the plan in areas across the state that would otherwise not likely receive this service. Additionally, the company must offer an enhanced Lifeline assistance program to assist customers at or below 150 percent of the poverty level in maintaining and establishing service.

Pricing for services other than basic local exchange service have varying levels of flexibility under the plan, depending upon the level of public interest in the services. Prices for Call Waiting, second and third local exchange service access lines, Call Trace, Centrex, PBX trunks, per line identification blocking, non-published number service, N-1-1 codes, and payphone access lines would be capped for two years with limited pricing flexibility thereafter. All other regulated, nonbasic local exchange services, like toll services and some custom calling services, would not be subject to any rate caps and would be priced by the electing company at market-based rates. While an electing company would have more pricing flexibility, it would remain subject to all of the Commission's rules protecting customers from unfair, inadequate, and unsafe company

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practices. Finally, the company is not permitted to end its alternative regulation plan until all commitments are fulfilled.

- (3) Chapter 4901:1-4, O.A.C., establishes the process by which ILECs can opt into the elective alternative regulation plan. Specifically, pursuant to Rule 4901:1-4-02, O.A.C., an ILEC can opt into an elective alternative regulation plan at anytime by making an appropriate filing. As set forth in the rules, an appropriate filing is one that includes: a completed application form; a proposal to cap basic local exchange service rates at existing levels pursuant to Section 4927.04, Revised Code, and price all other telephone services pursuant to Rule 4901:1-4-05(D), O.A.C., and Section 4927.03, Revised Code; a 30-day prefiling of all necessary tariff modifications; and a plan as to how the company will meet all of the commitments set forth in Rule 4901:1-4-05, O.A.C. An application filed under Chapter 4901:1-4, O.A.C., will be automatically approved on the 46th day after filing, unless the Commission suspends the application.

Rule 4901:1-4-02(D), O.A.C., allows any person to file a request for hearing on an application within 20 days of the filing of an elective alternative regulation plan. The rule further provides that "absent extraordinary circumstances established through clear and convincing evidence that reasonable grounds for a hearing exist, a hearing will not be held."

- (4) In accordance with Rule 4901:1-4-02(A)(3), O.A.C., Western Reserve prefiled all necessary tariff modifications with the Commission's staff on July 28, 2004.
- (5) Western Reserve agrees to fulfill the advanced services requirement by complying with Rule 4901:1-4-05, O.A.C. Western Reserve has listed the Class 5 central offices in its traditional operating area which serve census tracts with a population density of 500 or more people per square mile, as defined by the 2000 census, or are within the county seat.
- (6) Within its tariff Western Reserve has included the provisions for a Lifeline assistance program in accordance with the specifications of Rule 4901:1-4-05(B), O.A.C. Western Reserve intends to establish an annual Lifeline marketing budget of \$0.10 per residential access line for promoting Lifeline and performing outreach. All lifeline program activities will be coordinated through an advisory board composed of Commission staff, the Ohio Consumers' Counsel, consumer groups representing low income constituents, and the company. The initial meeting of the board will be held within 90 days after the effective date of the company's alternative regulation plan. The annual Lifeline communication budget will be determined based on the total

number of company residential access lines as of December 31 of the prior year.

- (7) Western Reserve will adhere to the retail rate commitments contained in Rule 4901:1-4-05(C), O.A.C., for all Tier1 noncore and Tier 2 services. Western Reserve will use the process and registration form adopted by the Commission in Case Nos. 99-998-TP-COI and 99-563-TP-COI as found in the Competitive Retail Service Rules 4901:1-6-01 through 4901:1-6-24, O.A.C.
- (8) On September 20, 2004, the Office of the Ohio Consumers' Counsel (OCC) moved to intervene in this proceeding. OCC moves to intervene as the representative of residential customers and under the authority of Chapter 4911, Revised Code. In asserting its right to intervene, OCC claims that it meets the criteria for intervention set forth in Rule 4901-1-11(A), O.A.C., and Section 4903.221(B), Revised Code. OCC points out that the Commission has granted it intervention in other elective alternative regulation cases involving United Telephone Company of Ohio dba Sprint, SBC Ohio, CenturyTel of Ohio, Inc., and Cincinnati Bell Telephone Company, Case Nos. 02-2117-TP-ALT, 02-3069-TP-ALT, 04-62-TP-ALT, and 04-720-TP-ALT, respectively.

We find that OCC has stated sufficient grounds for intervention. Accordingly, OCC's motion to intervene shall be granted.

- (9) On September 20, 2004, concurrently with its motion to intervene, OCC filed comments. In its comments, OCC urges the Commission to deny Western Reserve's application for two reasons. First, OCC contends that there is an absence of competition or reasonably available alternatives for landline service in Western Reserve's service territory. OCC counts 19 interconnection agreements that the company¹ has on file at the Commission. Of the 19, 10 are with cellular companies. OCC does not consider cellular service to be a reasonable alternative to landline telephone service. The remaining interconnection agreements, says OCC, are with companies that either serve only business customers or with prepaid providers. Second, OCC contends that Western Reserve's application fails to state that the company will grandfather the existing participants in the federal Lifeline program. OCC believes that Western Reserve is required by Rule 4901:1-4-05(B)(1)(c), O.A.C., to state affirmatively that it will grandfather the participants in the federal Lifeline program.

¹ This number, says OCC in a footnote to its comments, includes interconnection agreements filed either jointly by Western Reserve with its sister company, ALLTEL Ohio, Inc (ALLTEL) or individually by ALLTEL or individually by Western Reserve.

Overall, OCC concludes that granting this application would not be in the public interest. If the Commission, nevertheless, grants the application, OCC urges the Commission to direct the company to revise its tariff in accordance with OCC's comments.

- (10) On September 29, 2004, Western Reserve filed reply comments in response to the comments filed by OCC on September 20, 2004. In its reply comments Western Reserve contends that, once again in this case, OCC has only repeated the same "lack of competition" argument that the Commission has already found to be without merit in numerous previous alternative regulation proceedings, including one in which the Commission's conclusion with respect to competition or reasonably available alternatives was upheld by the Ohio Supreme Court. In urging the Commission to reject OCC's second argument, that certain required "grandfathering" language with respect to existing participants in the federal Lifeline program is missing from Western Reserve's application, Western Reserve cites to the specific portion of its proposed tariff that, indeed, sets forth the required "grandfathering" language.
- (11) Western Reserve's application for elective alternative regulation should be approved. Upon review of the comments presented by OCC, the Commission finds insufficient cause to deny this application. We reject OCC's assertion that there is an absence of competition in Western Reserve's service territory. We are aware that landline providers experience decreasing revenue and experience customer loss from wireless providers and cable modem service providers. One of the reasons for alternative regulation is to allow ILECs to counter increasing competition and customer attrition with the packaging of regulated and de-regulated services. To wait, as OCC suggests, until competition has demonstrated a strong foothold, may be too late for an ILEC to react with an effective competitive response.

Furthermore, in *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI (Case No. 00-1532-TP-COI), the Commission issued record-based findings and conclusions that all nonbasic services for all ILECs in Ohio are subject to competition or have reasonably available alternatives. In addition, the Commission found that ILECs are entitled to regulatory relief under Section 4927.03, Revised Code. We incorporate the record of Case No. 00-1532-TP-COI into this case, including the Commission's orders and evidence presented by the parties. The Commission's findings would, of course, apply to Western Reserve. Owing to our findings in Case No. 00-1532-TP-COI, we must reject the OCC's assertion that

competition or reasonably available alternatives do not exist in Western Reserve's service territory. We find that Western Reserve's application does affirmatively indicate, as required, that Western Reserve will grandfather the participants in the federal Lifeline program. On this topic, then, OCC's comments are moot.


It is, therefore,

ORDERED, That the OCC's motion to intervene is granted. It is, further,


ORDERED, That, upon due consideration of the comments filed by the OCC, Western Reserve's application for alternative regulation pursuant to Chapter 4901:1-4, O.A.C., is approved. The effective date of this new alternative regulation plan is October 15, 2004. It is, further,

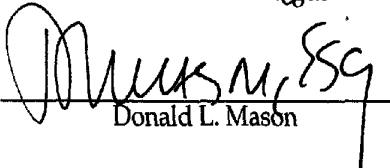
ORDERED, That a copy of this finding and order be served upon all parties, their respective counsel, and all interested persons of record.

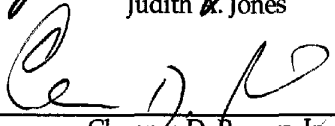
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


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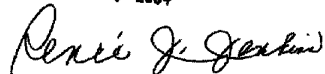

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OCT 13 2004



Renee J. Jenkins
Secretary