

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Review of)
the Alternative Regulatory Framework for)
Not-For-Profit Small Local Exchange) Case No. 05-1303-TP-COI
Telephone Companies.)

FINDING AND ORDER

The Commission finds:

- (1) Ohio is somewhat unique in that 35 of the 42 incumbent local telephone companies providing basic local telephone service in Ohio serve fewer than 50,000 access lines each. Eight of these 35 small local exchange companies (SLECs) operate as not-for-profit, mutually owned companies. All of the not-for-profit SLECs have fewer than 5,000 access lines, and all but two have fewer than 1,500 access lines each. Section 4927.04(B), Revised Code, allows the Commission to exempt SLECs from any provision of Chapter 4905. or 4909. of the Revised Code, except for specified sections, or to establish alternative regulatory requirements to apply to such companies provided the Commission finds that the alternative requirements are in the public interest.
- (2) Recognizing that SLECs have been faced with some unique problems in dealing with the vast changes taking place in the telecommunications environment and in light of the latitude Section 4927.04, Revised Code, provides small telephone companies, the Commission, more than 14 years ago, in Case No. 89-564-TP-COI (89-564), *In the Matter of the Commission Investigation Into the Implementation of Sections 4927.01 to 4927.05, Revised Code, as They Relate to Regulation of Small Local Exchange Telephone Companies*, established alternative regulatory requirements for SLEC rate and tariff changes. Specifically, with respect to not-for-profit SLECs, the Commission adopted a notice-type of alternative regulation, allowing not-for-profit SLECs to increase rates for basic local exchange service and other regulated services, without the prior approval of the Commission, under 60-day and 45-day automatic notice procedures. The Commission also allowed tariff changes not for an increase in rates to take effect upon filing with the Commission.

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- (3) In adopting these alternative requirements, the Commission reasoned that not-for-profit, mutual SLECs do not raise the same concerns as for-profit SLECs because the customers of the not-for-profit SLECs are, for all real intents and purposes, their owners. The not-for-profit companies' member/customers control, by their meetings and elections, all of the affairs of the companies, including the election of trustees and directors, the regulations under which the companies operate and the by-laws and charters of the companies. In this way, these member/customers play a direct or indirect role in the determination of the rates. Additionally, the Commission noted that not-for-profit companies have no profit motives, since excess revenues are returned to the member/customers at the end of the business year. The Commission went on to point out that not-for-profit SLECs rarely ever filed for rate increases.
- (4) Based on the experience of the last 14 years with alternative regulation, and considering the continually changing telecommunications market, the Commission found it appropriate to initiate this docket for the purpose of exploring further simplifying and streamlining the regulation of not-for-profit SLECs. Since the time the Commission first established alternative regulation for rate and tariff changes for not-for-profit SLECs, these companies have noticed very few increases. In fact, in the last 10 years, between all eight companies, docketing records show fewer than 10 notice filings that involved an increase in rates, and none of those applications involved an increase in basic local exchange service rates. To the extent companies did notify us of rate increases, they were, for the most part, non-controversial. Likewise, the Commission has received few complaints over the years from customers of not-for-profit SLECs. Accordingly, the Commission determined that it is time to consider relaxing even further the rate and tariff processes for not-for-profit SLECs.
- (5) In an effort to solicit more specific feedback, the Commission invited interested entities to comment on a staff proposal attached as Appendix A to the November 4, 2005 entry. Initial comments were due on December 2, 2005 and reply comments were due on December 19, 2005.

- (6) Comments and reply comments were filed in this matter by the Ohio Telecom Association (OTA), on behalf of its eight not-for-profit small local exchange telephone company members,¹ and by the Office of the Ohio Consumers' Counsel (OCC), on behalf of the residential utility consumers of the State of Ohio.
- (7) Generally, the OCC did not object to the general content of the staff proposal to replace the existing 89-564 requirements and certain statutory requirements with alternative regulatory requirements. The OCC did recommend, however, that customers should be notified of rate changes at least one billing cycle before the change becomes effective and that an application involving a change in rates should not be effective sooner than 15 days after the application is filed at the Commission. These minimum timeframes would afford customers the opportunity to complain about a proposed rate change, or to take other action, before being subject to an increase (OCC initial comments at 3). The OCC also urges the Commission to include an enhanced lifeline requirement consistent with the lifeline provisions proposed for small for-profit local exchange carriers in Case No. 05-1304-TP-ORD (*Id.*).
- (8) The OTA filed reply comments opposing the recommendations offered by the OCC. The OTA posits that the OCC's approach demonstrates a lack of understanding as to the organizational structure and operations of the not-for-profit SLECs. For instance, the OTA submits that the customers are also the owners of the not-for-profit SLECs and, as such, may offer input into the operations of the companies at any time (OTA reply comments at 2). Additional excess revenues are returned to the member/owners, and major changes in operations, including the raising of basic local exchange service rates, would be subject to prior review and approval of the member-elected Board of Directors (*Id.*). Further, a member/owner may request a special meeting of the board and/or request an appearance before any of the monthly board meetings to express concerns (*Id.*). Thus, the OCC's concerns are unfounded, the OTA

¹ Arthur Mutual Telephone Company, Bascom Mutual Telephone Company, Farmers Mutual Telephone Company, Minford Telephone Company, Ottoville Mutual Telephone Company, Sherwood Mutual Telephone Association, Inc., Vaughnsville Telephone Company and Wabash Mutual Telephone Company.

asserts. Regarding the enhanced lifeline requirement, the OTA maintains that OCC's recommendations would amount to an additional expense and create an unnecessary administrative burden on not-for-profit SLECs (*Id.*).

- (9) After a thorough review of the comments and reply comments offered by the OCC and by the OTA, respectively, the Commission agrees with the OCC that additional notice of rate increases should be afforded the not-for-profit SLECs' customers. Accordingly, we will modify the proposal by affording customers a 30-day advance notice of changes in rates, that result in an increase in customers' rates or changes in terms and conditions. Given the small number of customers served by the not-for-profit SLECs, a 30-day advance notice requirement is either roughly equivalent to or greater than the one billing notice cycle recommended by the OCC. Given this extended notice requirement, as well as the opportunities that already exist for member/customer input, we see no reason to delay the effective date of such rate, term or tariff change to 15 days after the application is filed with the Commission. We also see no reason to impose additional administrative burden and expense on the not-for-profit SLECs by requiring them to offer a lifeline program over and above the federal lifeline program. We find that the federal lifeline program is adequate to address the needs of low-income customers served by not-for-profit SLECs. As a result, we will not adopt the OCC's enhanced lifeline commitment proposal.
- (10) The OTA applauds the Commission's proposal to further simplify and streamline the regulation of the not-for-profit SLECs. However, according to the OTA, the staff proposal stops short of providing all the regulatory flexibility appropriate to the not-for-profit SLECs. Specifically, the OTA argues that the Commission should waive the regulatory requirements pertaining to complaint procedures, service abandonment procedures, merger approval, adequate service and reasonable rate requirements and minimum telephone service standard (MTSS) Rule 4901:1-5-17, Ohio Administrative Code (O.A.C.), concerning the denial or disconnection of local and toll service (OTA initial comments at 1-3). In making these recommendations, the OTA notes that the member/customers are best situated to determine the appropriate procedures of

their not-for-profit companies and that adequate notice is all that the Commission should require (*Id.*).

- (11) In its reply comments, the OCC offers arguments in opposition to the OTA's recommendations for further streamlining the obligations of the not-for-profit SLECs. The OCC points out the OTA's proposals are vague and ambiguous as the OTA fails to specify, except for the disconnection rule found in Rule 4901:1-5-17, O.A.C., the rules from which the OTA would have the Commission exempt not-for-profit SLECs (OCC reply comments at 2). Citing to a past MTSS order in Case No. 00-1265-TP-ORD, Finding and Order (May 29, 2001), the OCC notes that the Commission has previously determined that past performance is not a reason to exempt telephone companies from adherence to Commission regulations (*Id.*). Further, the OCC notes that the Commission has a statutory obligation to ensure that all telephone companies provide adequate service at reasonable rates; therefore, OCC argues the Commission should reject the OTA's proposal (*Id.* at 3). The OCC next labels as unwise the OTA's proposal to exempt not-for-profit SLECs from the Commission's complaint-handling regulations (*Id.*). Regarding MTSS Rule 4901:1-5-17, O.A.C., the OCC notes that this disconnection rule is an important consumer safeguard and, therefore, the Commission should not exempt any local service provider from this rule without sound justification, no matter how small and regardless of the nature of its ownership (*Id.* at 4-5).
- (12) In its comments, the OTA, on behalf of its not-for-profit members, asks the Commission to waive the regulatory requirements pertaining to complaint procedures, service abandonment procedures, merger approval, adequate service and reasonable rate requirements and MTSS Rule 4901:1-5-17, O.A.C., pertaining to denial and disconnection of telephone service. The relief requested by the OTA goes beyond the statutory authority provided to the Commission by the Ohio General Assembly. Consequently, the OTA's requests are denied.

The rate and tariff flexibility first afforded not-for-profit SLECs in 89-564 emanates from Section 4927.04(B), Revised Code. As noted above, given the experiences garnered over the past 14

years and considering the continually changing telecommunications market, the Commission found it appropriate to initiate this docket for the purpose of further simplifying and streamlining the 89-564 procedures. Any streamlining that occurs in the 89-564 procedures must be done consistent with the statutory authority outlined in the Ohio Revised Code. Section 4927.04(B), Revised Code, authorizes the Commission to exempt incumbent local exchange carriers serving fewer than 50,000 access lines from many provisions of Chapters 4905 and 4909, Revised Code, or establish alternative regulatory requirements to apply to such companies. However, provisions involving complaint procedures (Section 4905.26), adequate service and reasonable rate requirements (Section 4905.22), service abandonment (Sections 4905.20 and 4905.21) and MTSS denial/disconnection (Section 4905.231) are specifically not subject to exemption under Section 4927.04(B), Revised Code. Further, for public policy and public interest reasons, the Commission does not deem it advisable to exempt not-for-profit SLECs from the Commission's merger approval authority. For the foregoing reasons, we will not adopt the OTA's proposals recommending further streamlining of the 89-564 requirements.

- (13) The Commission notes that we have fully addressed all of the comments submitted concerning the staff proposal attached to the November 4, 2005 entry. Therefore, the staff proposal will be adopted at this time, subject to the modifications set forth above.

It is, therefore,

ORDERED, That the 89-564 requirements involving not-for-profit small local exchange carriers are replaced by the alternative regulatory requirements as set forth in Appendix A of this finding and order. It is, further,

ORDERED, That a new form for use by not-for-profit small local exchange carriers when submitting rate or tariff changes is adopted in the form set forth in Appendix B. It is, further,

ORDERED, That a copy of this finding and order be served upon each of the not-for-profit mutual incumbent local exchange telephone companies under the Commission's jurisdiction, the Ohio Telecom Association, the Office of the Ohio Consumers' Counsel and all other interested persons of record in this matter.

THE PUBLIC UTILITIES COMMISSION OF OHIO

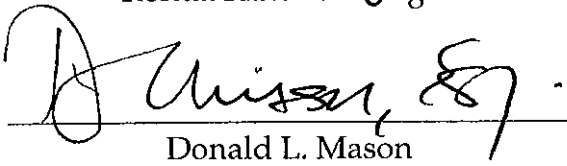
Alan R. Schriber, Chairman



Ronda Hartman Ferguson



Judith A. Jones

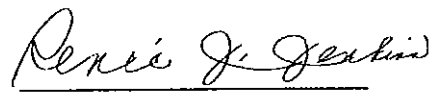


Donald L. Mason

Clarence D. Rogers, Jr.

JRJ/vrm

Entered in the Journal
MAR 01 2006



Renee J. Jenkins
Secretary

APPENDIX A

ALTERNATIVE REGULATION
OF
NOT-FOR-PROFIT SMALL LOCAL EXCHANGE COMPANIES (SLECs)

These alternative regulatory requirements shall supersede and replace the 89-564 requirements for not-for-profit SLECs.

Not-for-profit SLECs shall be permitted to increase rates for public telecommunications services and make tariff changes which are not for an increase in rates by filing with the Commission, on or before the effective date of the rate or tariff change, written notice of the rate or tariff change, under an NFP docket. Notice of any rate and tariff change shall be in the form attached as Appendix B, including final revised tariff sheets reflecting such change, and shall be filed under the NFP case and the appropriate TRF docket. Rate and tariff changes shall take effect, without Commission action or approval, upon filing or on the company-designated effective date, whichever is later.

Any rate or tariff changes resulting in an increase in rates or a change in terms and conditions of an existing service shall require customer notice. The not-for-profit SLEC must provide an affidavit verifying that prior notice, by bill insert, bill message, direct mail, or other form of notice prescribed by the by-laws, was given to the affected end user customers at least thirty days prior to the change in rate or terms and conditions.

Should the Commission determine, after the fact, based either on its own review or on the objections or complaints of affected customers, that the rate or tariff change implemented by the company may not be in the public interest or is in violation of Commission rules or regulations, the Commission will take whatever action it deems necessary, including suspension of the rate or tariff change or initiation of an investigation.

Either a full or partial suspension may be invoked by the Commission, legal director, deputy legal director, or attorney examiner. The not-for-profit SLEC may be required to discontinue providing the service or charging the rate until such time as the Commission takes further action. Under partial suspension, the not-for-profit SLEC may be precluded from obtaining new customers subsequent to the suspension until such time as the commission takes further action.

This zero-day notice process is not applicable to applications of not-for-profit SLECs to withdraw or grandfather basic local exchange service or other tier 1 services, as defined in Rule 4901:1-6-20, Ohio Administrative Code. Such applications shall be filed with the Commission, and the Commission will determine the appropriate procedures for considering such applications.

A not-for-profit SLEC may issue stocks, bonds, notes and other evidence of indebtedness without requesting prior Commission approval otherwise required by Sections 4905.40 and 4905.41, Revised Code. The Commission reserves the right to obtain from the not-for-profit SLEC any information regarding the issuance of stocks, bonds, notes and other evidence of indebtedness, should the Commission or its staff deem it necessary.

These alternative regulatory requirements address only the procedures for processing of not-for-profit SLEC rate and tariff changes under Sections 4909.18 and 4909.19, Revised Code, and the requirements for issuance of stocks, bonds, notes and other evidence of indebtedness under Sections 4905.40 and 4905.41, Revised Code. Not-for-profit SLECs remain subject to all other regulatory requirements, including Commission orders, the Ohio Administrative Code, and the Ohio Revised Code, unless otherwise expressly exempted. For instance, not-for-profit SLECs are still subject to the minimum telephone service standards, complaint procedures, service abandonment procedures, merger approval, adequate service and reasonable rate requirements, lifeline requirements, telephone assistance and hearing impaired program requirements, and Commission accounting requirements, etc.

APPENDIX B

The Public Utilities Commission of Ohio
Not-For-Profit Small Telephone Companies
Notice of Tariff Filing

Pursuant to Case No. 05-1303-TP-COI

Effective Date _____

Case No. _____ - _____ -TP-NFP

Docket No. _____ -TP-TRF

Name of Company _____

Address of Company _____

Regulatory Contact Person(s) _____

Telephone _____

Fax _____

E-Mail Address _____

Consumer Call Center Contact Person(s) _____

Telephone _____

Fax _____

E-Mail Address _____

This tariff filing gives notice of the following: (check all applicable):

- 1) ___ New Service Offering
- 2) ___ Rule or Regulation Required by Commission Order
- 3) ___ Reduction in Rates
- 4) ___ Correction of Error
- 5) ___ Various related and unrelated textual revisions
- 6) ___ Increase to non-basic local exchange service rates
- 7) ___ Increase to basic local exchange service rates
- 8) ___ New charge for service for which there was no previous charge
- 9) ___ Various related and unrelated textual revisions, which could result in an increase in rates to some or all customers
- 10) ___ Change in terms or conditions of existing service
- 11) ___ Other: _____

Check exhibits attached to filing (corresponding to items above)

- ___ Exhibit A: Existing schedule sheets (if applicable)
- ___ Exhibit B: New schedule sheets
- ___ Exhibit C: Explanation of Tariff Change (Required)
- ___ Exhibit D: Affidavit verifying Customer Notice (required for 6, 7, 8, 9 and 10)

SUBMIT THIS ORIGINAL NOTICE, PLUS ___ COPIES, TO THE PUBLIC UTILITIES COMMISSION OF OHIO'S DOCKETING DEPARTMENT. TARIFF FILINGS ARE DEEMED EFFECTIVE UPON FILING, OR UPON THE COMPANY-DESIGNATED DATE, WHICHEVER IS LATER.

I verify that all the information submitted herein is true and correct to the best of my knowledge.

(Signature and Title)

(Date)

Effective 3/1/06