

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of United )  
Telephone Company of Ohio dba Sprint for ) Case No. 02-2117-TP-ALT  
Approval of an Alternative Form of Regulation )  
Pursuant to Chapter 4901:1-4, Ohio )  
Administrative Code. )

FINDING AND ORDER

The Commission finds:

- (1) On August 19, 2002, United Telephone Company of Ohio dba Sprint (Sprint) filed an application for approval of an elective alternative regulation plan. Sprint's filing is the first application filed under Chapter 4901:1-4, Ohio Administrative Code (O.A.C.), and represents a culmination of almost two decades of alternative regulation for providers of telecommunications services in Ohio. In order to place this application into better perspective, it is important to first understand the evolution of Ohio's regulatory policy for telecommunications services.
- (2) The Commission first addressed the need for giving telephone companies more pricing flexibility in our April 9, 1985 Finding and Order in *In the Matter of the Commission Investigation Into the Regulatory Framework for Telecommunication Services in Ohio*, Case No. 84-944-TP-COI. Prior to that order, the fundamental theory underlying the Commission's traditional regulation of telephone companies was based on the premise that telephone companies were natural monopolies not constrained by the forces of the market in setting rates or managing their operations. However, the technological revolution of the 1970s and the 1980s, coupled with the emergence of a new federal regulatory approach, spawned a new era in telecommunications. Many segments of the telecommunications industry were, by 1985, no longer characterized by the monopolistic behavior of a few players. Instead, we began to see emerge a burgeoning of entities looking to compete in a competitive telecommunications marketplace. Recognizing this, the Commission decided that its traditional regulatory approach no longer made sense for at least some parts of the telecommunications industry and instituted a more flexible and streamlined regulatory approach for competitive service offerings.
- (3) A few years later, the Commission instituted a docket to gauge the effectiveness of this flexible regulatory approach, from both

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an industry and consumer perspective. (See *In the Matter of Phase II of the Commission Investigation into the Regulatory Framework for Competitive Telecommunications Services in Ohio*, Case No. 86-1144-TP-COI.) The Commission concluded that the advancements in the telecommunications market had already outgrown the limited authority we believed we had to streamline regulation under the then-current law. To address this reality, the Ohio General Assembly enacted, and the then-Governor Richard Celeste signed into law Amended Substitute House Bill No. 563 (H.B. 563) on December 15, 1988.

H.B. 563 established Sections 4927.01 through 4927.05, Revised Code. Specifically, Section 4927.03, Revised Code, enables the Commission to exempt from Chapters 4905 or 4909, Revised Code, or establish alternative regulatory requirements for any public telecommunication service, except basic local exchange service, provided the Commission finds such measure is in the public interest, and that the telephone company is subject to competition with respect to such public telecommunications service, or the customers of such service have reasonably available alternatives.

- (4) Since the enactment of H.B. 563, the Commission has continued, over the years, to reevaluate periodically not only the state of competition in the Ohio telecommunications marketplace, but also the effectiveness of our regulatory policies in fostering a competitive telecommunications environment in Ohio and protecting the public interest. With each reevaluation, the Commission has granted increasing flexibility to telephone companies, while still maintaining a residuum of regulatory authority necessary to fulfill our responsibility to carry out the policies of the state set forth in Section 4927.02, Revised Code. See *In the Matter of the Commission's Review of the Regulatory Framework for Competitive Telecommunications Services under Chapter 4927, Revised Code*, Case No. 89-563-TP-COI; *In the Matter of the Commission's Investigation into the Implementation of Sections 4927.01 to 4927.05, Revised Code, as They Relate to Regulation of Small Local Exchange Telephone Companies*, Case No. 89-564-TP-COI; *In the Matter of the Commission's Promulgation of Rules for Establishment of Alternative Regulation for Large Local Exchange Telephone Companies*, Case No. 92-1149-TP-COI; *In the Matter of the Commission's Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI; and *In the Matter of the Commission Investigation into Alternative Regulatory Treatment of Commercial Mobile Radio Service Providers*, Case No. 97-1700-TP-COI.

- (5) The Ohio General Assembly also kept pace with the changes taking place in the telecommunications environment. In 1996, Section 4905.04, Revised Code, was revised to give the Commission the power and jurisdiction to implement in Ohio the market-opening measures of the Telecommunications Act of 1996. In further recognition of the increasingly competitive telecommunications environment, the Ohio General Assembly, in 2000, amended Section 4927.01, Revised Code, to narrow the definition of basic local exchange service, thereby expanding the public telecommunications services eligible for alternative regulation or exemption from Commission regulation under Section 4927.03, Revised Code.
- (6) It is against this backdrop that the Commission initiated our most recent comprehensive review of the telecommunications industry and the applicable regulatory policies for all providers of telecommunications services, including incumbent local telephone companies (ILECs). See *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services under Chapter 4927, Revised Code*, Case No. 99-563-TP-COI; *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines*, Case No. 99-998-TP-COI; and *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). As part of this latest review, in Case No. 00-1532, the Commission, after several rounds of comments and local public hearings around the state, concluded that public telecommunications services other than basic local exchange service were subject to competitive options or had reasonably available alternatives. Based on these findings, the Commission found that it was in the public interest to adopt an "off-the-shelf," generic alternative regulation plan that any ILEC could elect to adopt.
- (7) Under the elective alternative regulation plan adopted by the Commission, an electing ILEC would have 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

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 2 years with limited pricing flexibility thereafter. All other regulated, non-basic 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 practices. Finally, the company is not permitted to end its alternative regulation plan until all commitments are fulfilled.

- (8) 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(C), O.A.C., and Section 4927.03, Revised Code; a 30-day pre-filing 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 46<sup>th</sup> 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."

- (9) Sprint's application for an elective alternative regulation plan was filed pursuant to Chapter 4901:1-4, Ohio Administrative Code. Along with its application, Sprint filed a motion for protective order with respect to Exhibit 3 of the

application and a request for waiver of a portion of Rule 4901:1-4-05(B)(1)(c), O.A.C., regarding lifeline optional features (lifeline optional features rule).

- (10) Sprint states in its application that it will comply with all Commission rules and policies contained in Chapter 4901:1-4, O.A.C., absent a waiver granted by the Commission for any specific requirement. Specifically, Sprint agrees to fulfill the advanced services commitment by complying with Rule 4901:1-4-05, O.A.C. The applicant will evaluate a customer's request to determine if grooming is required to permit advanced services deployment and, when necessary and technically feasible, to perform grooming to allow advanced services to as many customers as possible. Sprint pledges to provide notices to the Commission at the end of the 12 and 24-month periods, beginning with the approval of its alternative regulation plan, confirming that it has met the advanced services commitment.

Sprint has agreed to implement its lifeline assistance commitment by working with Commission staff and the Ohio Consumers' Counsel to identify additional agency participants for its lifeline program advisory board and to hold a meeting with the two agencies within one month of the approval of its alternative regulation plan. The company will hold the first meeting of its advisory board within two months of the effective date of the alternative regulation plan. Sprint will meet with the advisory board to develop an outreach program for the promotion and marketing of the lifeline program and has agreed to establish an annual lifeline program marketing budget of \$0.10 per residential access line.

The applicant will adhere to all the retail rate commitments contained in Rule 4901:1-4-05(C)(3) and (4), O.A.C., for all Tier 1 core and non-core services and Tier 2 services. Sprint agrees to comply with all previous and future Commission orders in extended area telephone service cases or in Case No. 00-127-TP-COI, *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges* (Case No. 00-127). The company's plan provides that a rate band adjustment pursuant to Rule 4901:1-7-04(B)(1), O.A.C., caused by the institution of extended area telephone service does not constitute a rate increase since the rates associated with the company's rate bands are not changing. Similarly, the plan provides that the addition of numerous new extended area telephone service routes approved in Case No. 00-127 which have and will result in rate band changes for many exchanges do not constitute a

rate increase and, therefore, are allowed under the alternative regulation plan.

- (11) On August 30, 2002, the Ohio Consumers' Counsel (OCC) filed three documents: a motion seeking permission to intervene; a motion seeking a stay of the proceedings or, in the alternative, a motion to dismiss the application; and a protest of the application and a motion for hearing with supporting affidavits.
- (12) On September 5, 2002, Sprint filed a motion seeking an extension of time to respond to OCC's filings. By attorney examiner's entry issued the same day, Sprint's request for an extension of time was granted. Accordingly, Sprint filed its memoranda contra OCC's motion to intervene, and motion for stay or, in the alternative, motion to dismiss on September 6, 2002, and its memorandum contra OCC's protest of the application and motion for a hearing on September 11, 2002.
- (13) OCC argues in its motion to intervene that, as the representative of the residential customers pursuant to Section 4911.14, Revised Code, and since this is the first elective alternative regulation application and involves the fixing of rates, OCC should be granted intervention in accordance with Rule 4901-1-11(A), O.A.C. OCC maintains that, in accordance with Section 4903.221(B), Revised Code, its interest and legal position merit granting the request for intervention, it will contribute to the resolution of the factual issues in this case, and it will not unduly prolong the proceeding.
- (14) Sprint stated in its memorandum contra OCC's motion to intervene that, contrary to OCC's unsubstantiated claim, Sprint's application in this case does not involve the fixing of rates. Sprint points out that the application proposes neither an increase nor a decrease in rates. Thus, according to Sprint, because this application does not involve the fixing of rates, OCC can not justify its intervention based on Section 4911.14, Revised Code, or Rule 4901-1-11(A), O.A.C. Sprint also believes that, if OCC were granted intervention in this matter, it would unduly delay this proceeding and unjustly prejudice Sprint in contravention of Section 4903.221(B), Revised Code. According to Sprint, a key element of the elective alternative regulation plan available in Chapter 4901:1-4, O.A.C., is the speed with which approval can be obtained. Furthermore, Sprint points out that Chapter 4901:1-4, O.A.C., contemplates that the Commission will hold a hearing in an elective alternative regulation case only if there exists extraordinary circumstances through clear and convincing evidence. According to Sprint, OCC has not established the requisite

circumstances in this case and, therefore, OCC's request to intervene is moot since no hearing will be held.

- (15) We find that OCC's motion to intervene in this case should be granted. However, we would note that the granting of OCC's intervention pursuant to Section 4903.221, Revised Code, provides OCC with the ability to participate in this case and is not necessarily an indication of the Commission's determination as to our decision on OCC's other motions in this matter.
- (16) OCC requests in its motion for stay or, in the alternative, motion to dismiss the application that Sprint's application be stayed pending the Ohio Supreme Court's consideration of OCC's appeal of the Commission's adoption of the rules in Chapter 4901:1-4, O.A.C., issued in Case No. 00-1532. OCC believes that the Commission, in Case No. 00-1532, erroneously concluded that all of the non-basic services of all Ohio ILECs are subject to competition or have reasonably available alternatives. OCC argues that, if Sprint's application is approved prior to the Supreme Court's decision on the appeal in Case No. 00-1532, Sprint would be able to increase rates for non-basic services in accordance with the rules. Subsequently, if the Commission's elective alternative regulation rules are overturned on appeal and Sprint has to rescind its non-basic rate increases, customers will be confused and they will not be able to recover the money they have spent on the higher priced services, thus suffering irreparable harm. OCC acknowledges that a stay of this application will also stay the broadband and lifeline commitments contained in Sprint's plan; however, OCC believes that the loss will only be the increment of benefit above Sprint's current operations.

Should the Commission not grant OCC's request for stay, OCC requests that the application be dismissed due to the fundamental flaws in the elective alternative regulation rules. In addition, OCC maintains that Sprint has not presented any evidence that all of its non-basic services are subject to competition or have reasonably available alternatives and, thus, can not qualify for alternative regulation under Section 4927.03(A), Revised Code. OCC continues by restating the arguments the Consumer Coalition (i.e., OCC, Appalachian People's Action Coalition, AARP, Communities United for Action, Edgemont Neighborhood Association, Empowerment Center for Greater Cleveland, City of Cleveland, City of Columbus, and City of Toledo) set forth in Case No. 00-1532, namely that: there is no record support in Case No. 00-1532 that all of the non-basic services for all of the ILECs were subject to competition; there is no showing of how many competitive

local exchange carriers (CLECs) or wireless carriers actually provide residential service in Sprint's territory or that such services are actually readily available; and there is no showing that CLECs have market share in ILEC territory. According to OCC, Sprint's application provides no information in addition to that provided in Case No. 00-1532 to demonstrate any of the above requirements.

- (17) With regard to OCC's request for stay, Sprint argues that OCC's pending appeal of Case No. 00-1532 is premature because OCC is attempting to appeal the result of a rulemaking proceeding. Sprint believes that the Supreme Court will dismiss the appeal and, therefore, the pending appeal is not sufficient basis to stay this case. Furthermore, since OCC has neither sought nor obtained a stay of the rules at the Supreme Court, the rules are currently in effect and OCC may not obtain in this case, indirectly, what the court has not granted, i.e., a stay of the rules effectiveness. In addition, Sprint argues that, if it increases a rate in compliance with Chapter 4901:1-4, O.A.C., any party seeking an appeal of that increase may only seek a stay of such increase by complying with Section 4903.16, Revised Code, that requires the party seeking the stay to post a bond, or the equivalent, in order to compensate Sprint for all damages that are caused by the stay of any order that permits the charging of increase rates.

Sprint asserts that, contrary to OCC's assertions, the alternative regulation rules do not just require commitments for advanced services deployment, the establishment of a lifeline program, and constrained prices on a few services. The rules also require that an ILEC cap its basic local exchange service and basic caller identification rates for as long as the ILEC remains subject to alternative regulation. Thus, Sprint argues, should the case be stayed, customers will be harmed by not being able to take advantage of these significant price constraints. With regard to the broadband commitment contained in this case, Sprint states that this plan commits Sprint to deploying advanced services four to five years earlier than Sprint's current operations call for. Sprint also points out that OCC speaks only on behalf of residential customers and not Sprint's business customers who will also benefit from the plan's commitments. Should this case be stayed, that benefit will be lost.

As for the motion to dismiss, Sprint asserts that OCC's claim that there is no showing that all of its non-basic services are subject to competition is based on the false premise that Sprint needs to make any showing with respect to its non-basic services. In Sprint's opinion, OCC's argument is simply a

collateral attack on the Commission's elective alternative regulation rules found in Chapter 4901:1-4, O.A.C., adopted in Case No. 00-1532 and should be denied.

- (18) On August 30, 2002, OCC filed its protest of the application and motion for hearing, along with supporting affidavits. In this filing, OCC argues that the Commission erred in Case No. 00-1532 by finding that all non-basic services of all ILECs are subject to competition or that customers of those services have reasonably available alternatives. Furthermore, OCC protests because Sprint has not shown that the application is in the public interest and because Sprint can not justify the freedom to increase non-basic service rates pursuant to Rule 4901:1-4-5(C), O.A.C.

OCC questions whether Sprint needs the freedom granted by alternative regulation to increase non-basic service rates given that the last time Sprint's rates and rate structure were examined was 20 years ago, that Sprint's past earnings are healthy, and that last year Sprint was permitted to begin charging its customers an intrastate access charge fee in order to recover some of the revenues lost as a result of reductions in intrastate access charge levels. Furthermore, OCC points out that Sprint currently operates under the rules established in Case No. 86-1144-TP-COI, which afford Sprint pricing flexibility for many of its non-basic services. Thus, OCC maintains that, given Sprint's current pricing flexibility and healthy earnings, absent a commitment to reduce or review rates, Sprint's application is not in the public interest.

OCC believes that Sprint should commit to providing customers with 30 days or one billing cycle notice of rate increases. OCC points out that the application contradicts the proposed tariff and should be clarified to state that, for the lifetime commitment, Sprint will provide both automatic enrollment and on-line verification. In addition, OCC believes that Sprint has not shown that it will comply with the advanced services commitment required by the rules. Thus, OCC submits that its representation in its filing, supported by the attached affidavits, provide clear and convincing evidence of extraordinary circumstances as required by Rule 4901:1-4-02(D), O.A.C., such that the Commission should grant a hearing on Sprint's application. OCC draws an analogy between the standard required by Rule 4901-1-11(F), O.A.C., that late-filed requests for intervention only be granted under "extraordinary circumstances" and the "extraordinary circumstances" requirements for a hearing required in the alternative regulation rules. In OCC's view, the extraordinary circumstances standard is not an onerous one to meet and,

since it has provided sufficient justification in this case to meet this test, the motion for hearing should be granted.

- (19) Sprint asserts in its memorandum contra OCC's protest and motion for hearing that OCC's arguments are nothing more than a collateral attack on the Commission's adoption of the alternative regulation rules in Chapter 4901:1-4, O.A.C., along with supporting affidavits. Sprint submits that the standard for determining that extraordinary circumstances exist such as to require a hearing in an alternative regulation case is a much higher standard than that required for intervention. In Sprint's estimation, permitting another party to participate in the case is much less onerous than holding a hearing where one would not have otherwise been held, not to mention the time and expense involved in the hearing process. The consequence of granting a motion to intervene is only adding one more party to the case whereas, in the alternative regulation context, the granting of a hearing absent extraordinary circumstances would diminish the value and benefits of the elective alternative regulation off-the-shelf concept.

As for OCC's argument that Sprint's rate structure has been in place for 20 years and that the intrastate access rate is in place, Sprint argues that that is not a basis on which to delay its entry into alternative regulation, and is irrelevant for purposes of this case. Should OCC or anyone believe that its rate structure is inappropriate, there has been ample opportunity to mount a legal challenge in the last 20 years. As for the argument that the notice for rate increase should be 30 days or one billing cycle, Sprint points out that this is a decision for the Commission to make, as it did in the alternative regulation rules docket, and while OCC may have an opinion, the Commission is capable of making its own determination of what is appropriate. Regarding lifeline, Sprint clarifies that it intends to provide both automatic enrollment and on-line verification in compliance with the rules. In response to the advanced services issues, Sprint stated that the granting of this application will result in the obligation for Sprint to deploy and continue to provide advanced services, not just the current possibility that deployment might exist, which Sprint states it does not. Furthermore, Sprint affirms that it will provide advanced services as required by Chapter 4901:1-4, O.A.C., contrary to OCC's assertion.

Sprint also provided affidavits attached to its memorandum contra which Sprint submits demonstrate that CLECs are active throughout its territory, thus providing reasonably available alternatives to Sprint's non-basic services. Competition is evidenced by the fact that, since April 2001, Sprint has

evidenced a net loss for all its primary access lines in service and for non-primary access lines in service. CLECs are currently providing service in Sprint territory via either resale or the use of unbundled network elements, and a number of other CLECs are in the process of negotiating interconnection contracts with Sprint. Since July 2001, Sprint's residential primary access lines in service have decreased by three percent and residential non-primary access lines in service have decreased by 12 percent. Furthermore, the widespread availability of wireless service shows, in Sprint's view, that non-basic services, in addition to basic local exchange services, are subject to competition and have reasonably available alternatives. Sprint argues that OCC has not demonstrated that any extraordinary circumstances exist that would justify a hearing on this application and, therefore, the protest should be dismissed and the application approved.

- (20) On September 27, 2002, Sprint filed a motion requesting that the Commission take administrative notice of the affidavit filed on behalf of Ameritech Ohio (Ameritech) in In the Matter of the Joint Application of SBC Communications Inc., SBC Delaware Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control (Case No. 98-1082). The purpose of the affidavit was to demonstrate to the Commission that the competitive line growth test set forth in the stipulation in that case had been met. According to Sprint, the affidavit demonstrates that, as of August 31, 2002, non-affiliated CLECs served over 260,000 residential lines in Ameritech's service territory in Ohio. This number does not include the number of lines that may have been lost to wireless competitors. Sprint states that this affidavit proves the conclusion that services other than basic local service are both subject to competition and have reasonably available alternatives. Furthermore, Sprint has demonstrated through its own affidavit that Sprint's non-basic services are subject to competition even in areas where CLECs have not commenced operation. Sprint advocates that the fact that CLECs serve over a quarter of a million residential lines in Ameritech's territory supports the contestable market theory advocated by Sprint. The fact that approximately 92 percent of the residential line competition in Ameritech's territory is provided via UNE-P or stand-alone UNE loops proves the actual ability of CLECs to compete in the provision of both non-basic and basic local service. Thus, Sprint submits that it is reasonable for the Commission to conclude that competitors have the actual ability to compete in Sprint's local service area, especially in light of the fact that a number of CLECs currently provide service in Sprint's territory and that AT&T is currently negotiating an interconnection agreement with Sprint.

OCC filed on September 30, 2002, a memorandum contra Sprint's motion to take administrative notice of an affidavit filed in Case No. 98-1082. OCC contends that the affidavit is not appropriate for administrative notice and that the material is irrelevant to this application. We find neither argument to be persuasive. OCC certainly has notice of the filing and has had an opportunity to explain its position regarding the information contained in the affidavit and to rebut the document. The information is relevant to this proceeding in that it demonstrates not only that ILECs are subject to competition, but also that competition does exist. The actual level of competition in a particular ILEC's territory at any given moment is not a necessary prerequisite for concluding that a service is "subject to competition" under Section 4927.03(A)(1), Revised Code. However, that is relevant information under Section 4927.03(A)(2), Revised Code, and serves as cumulative evidence to support the conclusions we reached in Case No. 00-1532 that are being applied in this case.

Upon consideration of Sprint's motion that we take administrative notice of the Ameritech affidavit and in light of the clear nexus between the factual information contained in the affidavit and our consideration of alternative regulation in this case, we find that the motion should be granted.

- (21) Rule 4901:1-4-05(B)(1)(c), O.A.C., states that an appropriate lifeline assistance program should contain the restriction that, with the exception of call waiting, a telephone company may not offer or market vertical services to existing or new customers, unless the company receives a signed statement from the customer self-certifying that the feature is necessary for medical and/or safety reasons. Existing customers in a company's lifeline program are grandfathered, so long as they do not make any changes to the existing local service. Sprint filed a motion requesting a waiver from this rule stating that, pursuant to the stipulation approved in Case No. 00-127 by the Commission in its Opinion and Order issued June 28, 2001, Sprint committed that, when it became subject to alternative regulation, it would seek a waiver from the Commission's rule prohibiting lifeline customers from purchasing vertical services.

On September 11, 2002, Parkview Area Seniors, Inc. (Parkview) filed objections to Sprint's application for waiver of the lifeline optional features rule. Specifically, Parkview requested that the Commission deny Sprint's request for waiver of the lifeline optional features rule stating that low-income seniors cannot afford to purchase package deals.

Rule 4901:1-4-01, O.A.C., clearly states that, while a motion for waiver of any requirement in the rules may be granted for good cause shown, such waivers are not looked upon favorably by us given our in-depth consideration of all the issues presented in Case No. 00-1532 prior to our issuance of the rules. Sprint provided little support for its request other than it committed to request the waiver in the stipulation in Case No. 00-127-TP-COI. In consideration of the concerns raised by Parkview and in light of our determination to scrutinize strictly any waiver request submitted in alternative regulation cases, we find that Sprint's motion should be denied. We would note, however, that, while the request for waiver is denied, the lifeline optional features rule does not prevent lifeline customers from subscribing to vertical services. They simply have to comply with the rule.

- (22) In its protest filed on August 30, 2002, OCC claimed that Sprint's application is unreasonable because the company failed to commit to providing customers with a 30-day notice of rate increases. The Commission agrees that some notice should be required, but finds that, until the Commission establishes a notice period for competitive telephone companies in Case Nos. 99-563-TP-COI and 99-998-TP-COI, a 15-day prior notice is sufficient.
- (23) In enacting Section 4927.03, Revised Code, the General Assembly conveyed considerable authority and discretion upon the Commission to relax regulatory requirements for competitive telecommunications services. That statute affords the Commission substantial flexibility to achieve telephone deregulation.

As is expressly contemplated by the statute, the Commission chose to create an industry-wide solution to make an off-the-shelf alternative regulation plan available to ILECs in Ohio. The rules created in Chapter 4901:1-4, O.A.C., enable ILECs to gain more flexible regulatory treatment for those services, other than basic local exchange service, that are already subject to competition or reasonably available alternatives, while at the same time benefiting Ohioans by assuring them of just and reasonable rates and the benefits of broadband and other new innovative services. In this context, we again emphasize that basic local exchange service, as defined in Section 4927.01, Revised Code, is not subject to pricing flexibility. This is because the rules contained in Chapter 4901:1-4, O.A.C., cap the basic local exchange service rates for the period that an ILEC is operating subject to an elective alternative regulation plan.

In issuing its orders in Case No. 00-1532 and adopting the elective alternative regulation rules, the Commission fully evaluated all of the evidence of record. In reaching its conclusions in Case No. 00-1532, the Commission fully considered the legal and policy positions advanced by all of the various parties, including the OCC. Among other things, the Commission's order in Case No. 00-1532 issued record-based findings and conclusions that all non-basic services for all ILECs in Ohio are subject to competition or have reasonably available alternatives, thereby justifying regulatory relief under Section 4927.03, Revised Code. As is contemplated by that statute, the Commission chose to issue general rules offering alternative regulatory requirements that would be available to all ILECs in Ohio (subject to the terms and conditions imposed by the rules). In its orders in Case No. 00-1532, the Commission conducted a methodical and detailed analysis to satisfy the applicable statutory criteria, based on the record in that case.

The Commission is not surprised that the OCC's position is unchanged. However, the Commission does recognize that OCC is making the very same arguments to challenge Sprint's application in this case as OCC made in challenging the rules approved in Case No. 00-1532. The Commission's orders in Case No. 00-1532 fully address the OCC's arguments raised in both proceedings and there is no reason for the Commission to repeat the same analyses and conclusions set forth in those orders. Likewise, there is no reason here to rediscuss and reevaluate the evidence submitted in the record in Case No. 00-1532 for the purpose of addressing OCC's same arguments. Accordingly, the Commission hereby incorporates into the record in this case the entire record from Case No. 00-1532, including but not limited to all of the Commission's orders as well as the evidence submitted by parties in that case. The record from that case should be considered as part of the record in this case and that record supports the Commission's orders in Case No. 00-1532 and the resulting rules adopted in Chapter 4901:1-4, O.A.C.

- (24) In its application filed on August 19, 2002, as clarified by its subsequent filings, Sprint submitted the necessary application and tariff modifications. The company also complied with the requisite 30-day prefiling requirement. In addition, Sprint affirmed through its filings in this docket that it would comply with all of the Commission's rules and policies contained in Chapter 4901:1-4, O.A.C. Specifically, Sprint committed to: fulfill the advanced services commitment as required by the rules and to submit notice to the Commission at the end of the 12 and 24-month periods confirming that this commitment has

been met, and implement the lifeline program as required by the rule, including the formation of the advisory board, the establishment of a lifeline marketing budget, and working with the staff and the advisory board to establish automatic enrollment and on-line verification.

As discussed in the prior finding, the Commission has previously concluded that non-basic services for all ILECs in Ohio are subject to competition or have reasonably available alternatives. However, in this proceeding Sprint has offered additional cumulative evidence, through the affidavit of Alan L. Lubeck filed on September 11, 2002, that its services are subject to competition and that that competition is growing. Eleven companies or corporations currently provide service in Sprint territory either through resale of facilities or use of unbundled network elements. Those eleven entities provide service in Sprint exchanges that consist of 72 percent of Sprint's total access lines in Ohio. In addition, Sprint is currently negotiating interconnection agreements with four additional entities who are seeking to enter Sprint's territory. According to an affidavit of Kathy A. Daniels, filed on the same date, for every month since April 2001, Sprint has experienced a net loss for all primary access lines in service and for non-primary access lines in service. Since July 2001, residential primary access lines in service have decreased by 3 percent and residential non-primary access lines have decreased by 12 percent. Sprint also maintains that the widespread availability of wireless telephone service not only provides a reasonably available alternative to basic local exchange service, but also provides a reasonably available alternative to Sprint's non-basic services, such as second and third access lines, call waiting, call trace, and per line blocking.

In addition to the minimum requirements for submitting an alternative regulation application under rules adopted in Case No. 00-1532, Sprint submitted additional evidence discussed above that, although cumulative to the justification and conclusions we reached in Case No. 00-1532, does provide additional support for granting the application in this case. The fact that more than one-quarter of a million residential lines have been lost to competition in Ameritech's territory alone shows that local telephone competition is occurring on a large scale in Ohio. The additional competitive activity in Sprint's territory, reflected in their affidavits, also demonstrates that services in Sprint's territory are subject to competition.

Furthermore, the Commission has previously concluded in Case No. 00-1532 that the elective alternative regulation plan satisfies the public interest test of Section 4927.03, Revised

Code, and satisfies the state's policy goals outlined in Section 4927.02, Revised Code. We found that capping basic local exchange rates ensures that reasonable rates for basic local exchange service are maintained, and that market forces will keep non-basic rates at reasonable levels. We further found that elective alternative regulation will encourage companies to develop innovative products, services, and service packages. Encouraging ILECs to innovate will, in turn, incent competitors to innovate and diversify the offerings they provide in Ohio. The Commission's adoption of the elective alternative regulation plan is consistent with the policy of the state to embrace more flexible regulatory treatment for the competitive telecommunications environment. Specific to this case, Sprint's customers would benefit from a basic local exchange rate cap commitment, an advanced services commitment and an enhanced lifeline assistance commitment, all of which Sprint would otherwise not be required to fulfill but for its election of the alternative regulatory treatment for non-basic services. In total, the Commission finds that the elective alternative regulatory plan advances the public interest.

Rule 4901:1-4-02(D), O.A.C., states that, "absent extraordinary circumstances established through clear and convincing evidence that reasonable grounds for a hearing exist, a hearing will not be held." We have thoroughly reviewed OCC's protest and motion for hearing and find that it does not meet the requisite test established in the rule. Accordingly, upon careful consideration of Sprint's application, we conclude that all of the requisite information is contained in the application and, given our denial of Sprint's motion for waiver of the lifeline optional features rule, we find that Sprint has demonstrated that it will adhere to all of the requirements set forth in Chapter 4901:1-4, O.A.C. Therefore, we find that Sprint's application for elective alternative regulation shall be deemed approved on the 46<sup>th</sup> day after filing or October 4, 2002. In light of this conclusion and approval, we find that OCC's motion for a stay or, in the alternative, a motion to dismiss the application, as well as its motion for hearing are denied.

- (25) On August 19, 2002, Sprint filed a motion for protective order along with its application. In that filing, Sprint requests that Exhibit 3, which consists of maps that depict the wire center and specific geographic areas in which advanced services will be made available in order to fulfill this commitment, be protected. According to Sprint, the information that has been redacted in this exhibit is competitively sensitive and competitors could use the information to compete more effectively with Sprint. Should the competitors obtain the

information, they could use the knowledge to deploy their advanced service in those areas at an earlier date in order to gain a competitive advantage over Sprint. Accordingly, Sprint requests protection of this information stating that it qualifies as a trade secret pursuant to Section 1333.61(D), Revised Code.

On September 3, 2002, OCC filed a memorandum contra Sprint's motion for a protective order requesting that Sprint's request for protective treatment be denied or, if the Commission is not convinced that the motion should be denied, that it conduct an in camera examination of the exhibit where both OCC and Sprint may argue their points. On September 27, 2002, Sprint and OCC filed a stipulation stating that Sprint will file a revised version of Exhibit 3 that will contain all of the information in the unredacted version of the exhibit except for the location of cable routes and that, based upon this commitment to revise the exhibit, OCC withdraws its opposition to Sprint's motion for protective order. In accordance with the stipulation, Sprint filed a revised public version of Exhibit 3 on October 1, 2002.

Accordingly, upon consideration of Sprint's request for a protective order of Exhibit 3, as revised by the stipulation filed on September 27, 2002, the Commission finds that Sprint's request should be granted. Pursuant to Rule 4901-1-24(F), O.A.C., this protective order will automatically expire 18 months after the date of its issuance. Extensions of the protective order may be requested by filing an appropriate motion 45 days in advance of the expiration date of the existing order.

It is, therefore,

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

ORDERED, That Sprint's motion requesting that the Commission take administrative notice of the affidavit filed on behalf of Ameritech in Case No. 98-1082 is granted. It is, further,

ORDERED, That Sprint's request for waiver of Rule 4901:1-4-05(B)(1)(c), O.A.C., the lifeline optional features rule, is denied. It is, further,

ORDERED, That Sprint provide a 15-day notice to customers of any rate increase made pursuant to its alternative regulation plan. It is, further,

ORDERED, That OCC's motion for a stay or, in the alternative, a motion to dismiss the application, as well as its motion for hearing are denied. It is, further,

ORDERED, That Sprint's application for elective alternative regulation shall be deemed approved on the 46<sup>th</sup> day after filing or October 4, 2002. It is, further,

ORDERED, That Sprint's request for a protective order of Exhibit 3, as revised by the stipulation filed on September 27, 2002, should be granted. It is, further,

ORDERED, That the docketing division maintain under seal the information set forth in revised Exhibit 3 of the application for a period of 18 months from the date of this finding and order. It is, further,

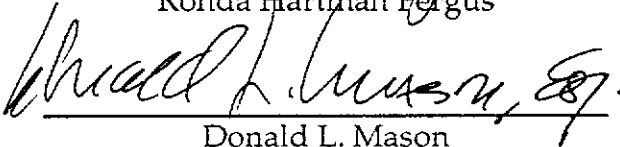
ORDERED, That a copy of this finding and order be served upon all interested parties of record.

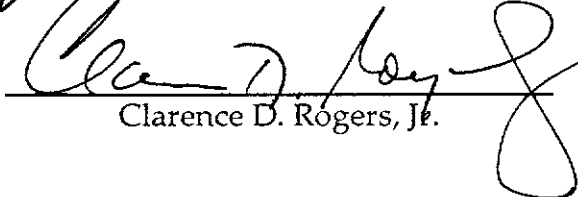
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Alan R. Schriber, Chairman

  
Ronda Hartman Fergus

  
Judith A. Jones

  
Donald L. Mason

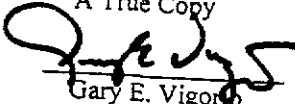
  
Clarence D. Rogers, Jr.

CMTP/vrm

Entered in the Journal

OCT 3 2002

A True Copy

  
Gary E. Vigor  
Secretary

**CASE NUMBER:** 02-2117-TP-ALT  
**CASE DESCRIPTION:** UNITED TELEPHONE CO. OF OHIO dba SPRINT  
**DOCUMENT SIGNED ON:** 10/3/2002  
**DATE OF SERVICE:** 10/3/02

**PARTIES SERVED**

**PARTIES OF RECORD**

**ATTORNEYS**

**APPLICANTS**

SPRINT  
JOSEPH R. STEWART  
50 W. BROAD STREET SUITE 3600  
COLUMBUS, OH 43215

JOSEPH R. STEWART  
SPRINT  
50 WEST BROAD STREET  
SUITE 3600  
COLUMBUS, OH 43215

**INTERVENORS**

OFFICE OF CONSUMERS' COUNSEL  
10 WEST BROAD STREET  
SUITE 1800  
COLUMBUS, OH 43215

DAVID C. BERGMANN  
ATTORNEY AT LAW  
OFFICE OF CONSUMERS COUNSEL  
10 W. BROAD STREET, SUITE 1800  
COLUMBUS, OH 43215

PARKVIEW AREAWIDE SENIORS, INC.  
DORAN MCKEEVER, PRESIDENT  
P.O. BOX 14604  
CLEVELAND, OH 44114  
Phone: (216) 281-4849

NONE