

ORIGINAL

In The
Supreme Court of Ohio

ValTech Communications, LLC,

Appellant,

v.

The Public Utilities Commission of
Ohio,

Appellee.

: Case No. 08-873
:
: On appeal from the Public Utilities
: Commission of Ohio, Case No. 04-658-
: TP-CSS, *In the Matter of the Complaint*
: *of Communications Options, Inc. vs*
: *ValTech Communications for the Alleged*
: *Subscriber Slamming and Request that*
: *ValTech Cease and Desist All Efforts to*
: *Obtain Customers in a Manner Not*
: *Fitting with Local Service Guidelines*
: *Appendix A, Section XVII (C).*

REPLY BRIEF
SUBMITTED ON BEHALF OF APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO

Charles H. Cooper, Jr. (0037295)
Rex H. Elliot (0054054)

Counsel of Record
Sheila P. Vitale (0068271)
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, OH 43221
614.481.6000
614.481.6001 (fax)

Counsel for Appellant,
ValTech Communications, LLC

Richard Cordray (0038034)
Ohio Attorney General

Duane W. Luckey (0023557)
Section Chief

William L. Wright (0018010)
Counsel of Record

John H. Jones (0051913)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Fl
Columbus, OH 43215-3793
614.466.4397
614.644.8764 (fax)
duane.luckey@puc.state.oh.us
william.wright@puc.state.oh.us
john.jones@puc.state.oh.us

Counsel for Appellee,
The Public Utilities Commission of Ohio

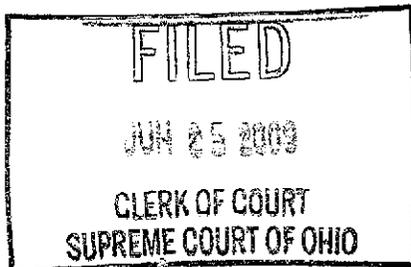


TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES..... ii

INTRODUCTION..... 1

ARGUMENT 2

 Former Ohio Administrative Code Section 4901:1-5-08(C) did not
 apply when a slamming complaint was brought by an authorized
 carrier. 2

CONCLUSION..... 7

PROOF OF SERVICE..... 8

APPENDIX **PAGE**

In re Communications Options, Inc. v. ValTech Communications, Case No.
04-658-TP-CSS (Second Entry on Rehearing) (March 5, 2008) 1

Ohio Rev. Code Ann. § 4905.26 (West 2009)..... 11

Ohio Admin. Code § 4901:1-5-08 (West 2007)..... 12

Ohio Admin. Code § 4901:1-5-09 (West 2009)..... 14

47 C.F.R. § 64.1150 (2009)..... 14

TABLE OF AUTHORITIES

Page(s)

Statutes

Ohio Rev. Code Ann. § 4905.26 (West 2009) 2, 3, 4

Other Authorities

In re Communications Options, Inc. v. ValTech Communications, Case No.
04-658-TP-CSS (Second Entry on Rehearing) (March 5, 2008) 2

Rules

Ohio Admin. Code § 4901:1-5-08 (West 2007)..... *passim*

Ohio Admin. Code § 4901:1-5-09 (West 2009)..... 2

Regulations

47 C.F.R. § 64.1150 (2009)..... 3, 4

**In The
Supreme Court of Ohio**

ValTech Communications, LLC,	:	Case No. 08-873
	:	
Appellant,	:	On appeal from the Public Utilities
	:	Commission of Ohio, Case No. 04-658-
v.	:	TP-CSS, <i>In the Matter of the Complaint</i>
	:	<i>of Communications Options, Inc. vs</i>
The Public Utilities Commission of	:	<i>ValTech Communications for the Alleged</i>
Ohio,	:	<i>Subscriber Slamming and Request that</i>
	:	<i>ValTech Cease and Desist All Efforts to</i>
Appellee.	:	<i>Obtain Customers in a Manner Not</i>
	:	<i>Fitting with Local Service Guidelines</i>
	:	<i>Appendix A, Section XVII (C).</i>

**REPLY BRIEF
SUBMITTED ON BEHALF OF APPELLEE,
THE PUBLIC UTILITIES COMMISSION OF OHIO**

INTRODUCTION

The Public Utilities Commission of Ohio (Commission) is in full agreement with ValTech that no issue in this appeal is federally-preempted or requires referral to the Federal Communications Commission for its expertise. The Commission submits this reply brief to respond to a single issue discussed by ValTech in its Supplemental Brief.

ARGUMENT

Former Ohio Administrative Code Section 4901:1-5-08(C) did not apply when a slamming complaint was brought by an authorized carrier.

ValTech's fundamental premise is that former O.A.C. 4901:1-5-08(C)¹ constituted a procedural pre-requirement to the filing of a slamming complaint under R.C. 4905.26. Ohio Rev. Code Ann. § 4905.26 (West 2009), Appendix at 11; ValTech Supp. Brief at 3-5. Specifically, ValTech contends that the language "whose complaint cannot be resolved informally may file a formal complaint" under Subsection (D) of the rule, which must be read in conjunction with subsection (C), "constitutes a mandatory procedural requirement that if not followed, precludes the filing of a complaint with the PUCO under § 4905.26." ValTech Supp. Brief at 3. The Commission correctly found that neither O.A.C. 4901:1-5-08(C) nor (D) applied to the factual scenario presented below and, further, neither establish any prerequisite to filing a formal complaint under R.C. 4905.26. Ohio Rev. Code Ann. § 4905.26 (West 2009), Appendix at 11; *In re Communications Options, Inc. v. ValTech Communications*, Case No. 04-658-TP-CSS (Second Entry on Rehearing at 3-4) (March 5, 2008), Appendix at 3-4. A close look at this former rule reveals a rather obvious and fatal flaw in ValTech's position.

O.A.C. 4901:1-5-08(C) was a rule designed to assist and protect *subscribers* who believed they had been slammed. Ohio Admin. Code § 4901:1-5-08 (West 2007),

¹ Ohio Admin. Code § 4901:1-5-09 (West 2009) replaced Ohio Admin. Code § 4901:1-5-08 (West 2007) effective 01/01/2008, as Ohio's anti-slamming rule. See Appendix at 12-14.

Appendix at 12-13. Subsection (C) of the rule established an informal resolution process, where the telecommunications provider *was informed by the subscriber*, to assist the customer in obtaining inexpensive and efficient review and resolution of their slamming claims. This user-friendly recourse was designed to encourage subscribers to come forward when they believed they had been the victim of slamming. Importantly, this process had to be triggered by affirmative action taken by either the subscriber or the Commission. ValTech's assertions regarding O.A.C. 4901:1-5-08 ignore this important provision of the rule. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13.

The triggering language in O.A.C. 4901:1-5-08(C), like its federal counterpart, 47 C.F.R. 64.1150(b), contemplated the carrier being informed, by either the subscriber or the Commission, of an unauthorized provider change. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13; 47 C.F.R. § 64.1150(b) (2009), Appendix at 14-15. This, in turn, required the carrier to refer the consumer to both the authorized and unauthorized carriers, and the Commission, for resolution of the *consumer* complaint. Here, it was the authorized carrier, Communication Options, Inc. (COI), and not its subscribers, who brought the slamming allegations. Thus, there was no need to invoke the informal process contemplated under Subsection (C).² This Commission logically found that Subsection (C) of the rule had no application. In other words, the Commission interpreted its rule to mean that a carrier had no obligation to direct subscriber(s) to the rele-

² Nothing in either the Commission's rule or the companion federal rule mandated that a subscriber must pursue an informal process before filing a formal R.C. 4905.26 complaint with the Commission. This informal process was optional with the subscriber and is thus not a jurisdictional prerequisite to the Commission's exercising its authority to adjudicate a slamming complaint.

vant carriers and commission, when it was not the subscriber(s) pursuing the complaint but, instead, the authorized carrier. COI's complaint was a logical reaction to the many change orders that it received from ValTech, some of which were later proven to have been unlawfully submitted. There is nothing in Ohio law that precludes an authorized telecommunications provider from bringing a slamming complaint.

ValTech paints a misleading and incomplete picture for the Court. Its reference to Subsection (D) of O.A.C. 4901:1-5-08, in isolation, is misplaced because this subsection did not mandate any particular informal process for litigants to follow before filing a formal complaint under R.C. 4905.26. Ohio Rev. Code Ann. § 4905.26 (West 2009), Appendix at 11; Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13. Instead, Subsection (D) must be read in conjunction with Subsection (C) of the rule that delineated when the informal resolution process was triggered. O.A.C. 4901:1-5-08(C), which tracked federal counterpart 47 C.F.R. 64.1150(b), was designed to help consumers obtain an efficient, inexpensive, and expedited resolution to their slamming claims. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13; 47 C.F.R. § 64.1150(b) (West 2009), Appendix at 14-15. Subsection (D) logically built upon Subsection (C) by providing for the filing of a formal complaint under R.C. 4905.26, where informal efforts had failed to resolve the *subscriber's* dispute. Ohio Rev. Code Ann. § 4905.26 (West 2009), Appendix at 11. Nothing in Subsection (D) created a mandatory informal process when a *carrier* brought the slamming complaint, nor did this section of the rule delineate any particular resolution process that had to be engaged in to resolve a carrier-initiated complaint. A *prehearing settlement conference* was scheduled, held, and proved unsuc-

cessful, leaving a formal complaint and hearing process as the only remaining avenue for ValTech and COI to resolve their slamming differences.

O.A.C. 4901:1-5-08(C) was designed to assist and protect subscribers who believed they had been slammed. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13. The user-friendly informal process under the rule was triggered by either subscriber or Commission action. The informal complaint process was meant to help the consumer and not the slammer, like ValTech, that seeks to avoid liability by using the rule as an affirmative defense in an effort to divest the Commission of jurisdiction to carry out its delegated slamming enforcement role. The Commission correctly applied and interpreted its rule, when it found that the trigger in subpart (C) was never met in this case because it was a carrier complaint. O.A.C. 4901:1-5-08(C) was not applicable to the factual circumstances presented below. Ohio Admin. Code § 4901:1-5-08(C) (West 2007), Appendix at 12-13.

There is no logical reason, and ValTech has certainly not enunciated one, to subject telephone slamming victims to a more burdensome jurisdictional threshold than other types of utility consumers wishing to file complaints with the Commission. Stated differently, O.A.C. 4901:1-5-08(C) was not created for, and the Commission submits, should not be available as an affirmative defense to insulate a proven wrongdoer, like ValTech, from the slamming violations that it engaged in. Ohio Admin. Code § 4901:1-5-08(C) (West 2007), Appendix at 12-13. Neither sound public nor regulatory policy support an application of the Commission's rule that creates a jurisdictional hurdle to divest the Commis-

sion of its authority to perform its appointed task of adjudicating slamming complaints and issuing relief where the facts support it.

In sum, former O.A.C. 4901:1-5-08 inured to the benefit of *subscribers* to facilitate efficient and inexpensive resolution of their slamming claims. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13. Former O.A.C. 4901:1-5-08 was never intended, the Commission submits, to be raised as an affirmative defense or to be asserted as a jurisdictional hurdle to defeat the authority delegated by the General Assembly to the Commission to aggressively resolve slamming complaints. Ohio Admin. Code § 4901:1-5-08 (West 2007), Appendix at 12-13.

ValTech's misapplication of O.A.C. 4901:1-5-08(C) and (D) should be rejected and the Commission's decision should be affirmed. Ohio Admin. Code § 4901:1-5-08(C) and (D) (West 2007), Appendix at 12-13.

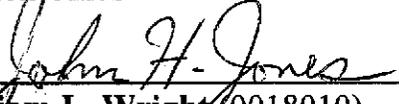
CONCLUSION

Based upon the merit brief and the supplemental briefs filed, the Commission respectfully requests that the Court affirm the Commission.

Respectfully submitted,

Richard Cordray (0038034)
Ohio Attorney General

Duane W. Luckey (0023557)
Section Chief

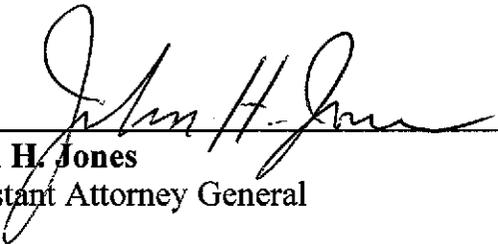

William L. Wright (0018010)
Counsel of Record

John H. Jones (0051913)
Assistant Attorneys General
Public Utilities Section
180 East Broad Street, 9th Fl
Columbus, OH 43215-3793
614.466.4397
614.644.8764 (fax)
duane.luckey@puc.state.oh.us
william.wright@puc.state.oh.us
john.jones@puc.state.oh.us

**Counsel for Appellee,
The Public Utilities Commission of
Ohio**

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of appellee, the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 25th day of June, 2009.



John H. Jones
Assistant Attorney General

Parties of Record:

Charles H. Cooper, Jr.
Rex H. Elliot
Counsel of Record
Sheila P. Vitale
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, OH 43221

APPENDIX

APPENDIX

TABLE OF CONTENTS

	Page
<i>In re Communications Options, Inc. v. ValTech Communications</i> , Case No. 04-658-TP-CSS (Second Entry on Rehearing) (March 5, 2008)	1
Ohio Rev. Code Ann. § 4905.26 (West 2009)	11
Ohio Admin. Code § 4901:1-5-08 (West 2007).....	12
Ohio Admin. Code § 4901:1-5-09 (West 2009).....	14
47 C.F.R. § 64.1150 (2009).....	14

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
 Communication Options, Inc.,)
)
 Complainant,)
)
 v.) Case No. 04-658-TP-CSS
)
 ValTech Communications LLC,)
)
 Respondent.)

SECOND ENTRY ON REHEARING

The Commission finds:

- (1) On September 13, 2006, the Commission issued its opinion and order in this case finding that, based on the record in this proceeding, the actions of agents for ValTech Communications LLC (ValTech) failed to comply with the Minimum Telephone Service Standards (MTSS) set forth in Rules 4901:1-5-07, and 4901:1-5-08, Ohio Administrative Code (O.A.C.), which were adopted in accordance with Sections 4905.231 and 4905.72, Revised Code.
- (2) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.
- (3) On October 12, 2006, ValTech filed an application for rehearing. ValTech's application raised seven assignments of error associated with the Commission's September 13, 2006, opinion and order which are addressed below.
- (4) On October 23, 2006, the complainant, Communication Options, Inc. (COI), filed a motion for an extension of time until November 6, 2006, to respond to ValTech's application for rehearing. By attorney examiner entry issued October 24, 2006, COI was granted an extension of time until October 25, 2006, to file its response to ValTech's application. On October 24, 2006, COI filed a memorandum contra ValTech's application. In its

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
 Technician FM Date Processed 3/5/2008

be treating those entities alleging instances of unauthorized provider changes more stringently than any other complaint proceeding brought before the Commission which could have the undesired effect of discouraging entities from pursuing allegations of unauthorized provider changes and thereby improperly rewarding telecommunications providers for unauthorized conduct.

Rule 4901:1-5-08(C), O.A.C., clearly does not make compliance with this rule a prerequisite to filing a formal complaint under Section 4905.26, Revised Code. Rule 4901:1-5-08(C), O.A.C., stated, in relevant part, that "[A]ny telecommunications provider that is informed by a subscriber or the commission of an unauthorized provider change shall follow the informal complaint procedures and remedies prescribed by the federal communication commission for the resolution of informal complaints of unauthorized changes..." (Emphasis added). Rule 4901:1-5-08(C), O.A.C., clearly applies the FCC's informal complaint procedures for an unauthorized provider change when a telecommunications provider is informed by a subscriber or by the Commission that an unauthorized provider change has occurred. Procedurally, this case was not brought by a subscriber or by the Commission but rather by another carrier that believed itself to be the authorized carrier for the involved subscribers. Therefore, Rule 4901:1-5-08(C), O.A.C., had no applicability to this proceeding.

Rule 4901:1-5-08(D), O.A.C., also does not establish any prerequisite that must be met before filing a complaint under Section 4905.26, Revised Code. Rule 4901:1-5-08(D), O.A.C., merely states that "[A]ny subscriber or telecommunications provider whose complaint cannot be resolved informally may file a formal complaint under section 4905.26 of the Revised Code..." (Emphasis added). There is no reference in this rule back to the informal procedures identified in either Rule 4901:1-5-08(C), O.A.C., or to the informal complaint procedures and remedies prescribed by the FCC. Thus, an authorized telecommunications provider, such as COI in this instance, could pursue either informal mediation of its complaint with the Commission outside the setting of a formal complaint proceeding or within the formal complaint at a prehearing settlement conference held specifically in an effort to resolve the complaint without going to a formal hearing as the

LOA's are obtained through deception and duress, the Commission stated that verified consent does not exist and slamming has occurred. Applying ValTech's logic to the facts of this case would allow ValTech, or any telecommunications provider, to avoid liability under Section 4905.72, Revised Code, simply by producing a signed authorization form whether valid or fraudulent. Such a result can not be countenanced. Rehearing is, therefore, denied.

- (7) In its third assignment of error, ValTech claims that its motion for sequestration of witnesses, under Ohio Evidence Rule 615, was denied improperly. Therefore, the testimony of subpoenaed witnesses was inherently unreliable and prejudicial to ValTech.

Ohio Evidence Rule 615 does require the exclusion of witnesses so long as the witness is not party to the proceeding and Section 4903.22, Revised Code, generally requires the rules of evidence to apply to Commission proceedings as the rules would apply to proceedings in civil actions. Nonetheless, the Ohio Supreme Court, in *Chesapeake & RY. Co. v. Pub. Util. Comm.* (1955), 163 Ohio St. 252, 263, recognized that the Commission, being an administrative body, is not and should not be inhibited strictly by the rules of evidence which prevail in courts regarding the admissibility of evidence. Moreover, as the Ohio Supreme Court found in *Elyria Telephone Co. v. Pub. Util. Comm.* (1953), 158 Ohio St. 353, the Commission has very broad discretion in the conduct of its proceedings. The Ohio Supreme Court has likewise held that the court will not reverse an order of the Commission as unreasonable or unlawful so long as the error did not prejudice the party seeking such reversal. See, *Cincinnati v. Pub. Util. Comm.* (1949), 151 Ohio St. 353.

In this instance, the Commission finds that the ruling of the examiner at hearing, even if in error, did not prejudice ValTech. Counsel for ValTech made his motion for exclusion of witnesses very early in the proceeding before opening statements and before the first witness testified (Tr. I at 6-7). The attorney examiner stated that she was holding a ruling in abeyance until such time as she heard some of the witnesses' testimony. In so ruling, however, the attorney examiner cautioned the witnesses that their testimony should be limited

- (9) ValTech next contends that the Commission's September 13, 2006, opinion and order is manifestly against the weight of the evidence adduced at the hearing in this matter. Moreover, ValTech submits that the recitation of evidence as to the subscriber witnesses is replete with generalizations, oversimplifications, and simple misstatements of the testimony. We disagree. The Commission thoroughly summarized, in its 40-page opinion and order, the evidence of record and set forth findings of fact that supported the ultimate decisions rendered in the September 13, 2006, opinion and order. ValTech's argument presumes that a complete recitation of the entire evidentiary record would result in a different outcome. ValTech has failed to point to any statute or case law to support its proposition. In fact, the relevant statutes and case law, as discussed below, support the Commission.

Section 4903.09, Revised Code, requires that, in all contested cases heard by the Commission, a complete record of the proceedings be made of all testimony and all exhibits and the Commission must set forth findings of fact and written opinions setting forth the reasons for the decisions arrived at based upon said findings of fact. The Ohio Supreme Court found in *MCI Telecommunications Corp. v. Pub. Util. Comm.*, (1988) 38 Ohio St. 3d 266, that the purpose of Section 4903.09, Revised Code, is to enable the Ohio Supreme Court to review an action of the Commission without reading the voluminous records in Commission cases. The Ohio Supreme Court has also found that the purpose of this statute governing written opinions filed by the Commission in all contested cases is to provide the court with sufficient details to enable the court to determine how the Commission reached its decision. See *Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, (1994) 70 Ohio St. 3d 202. The Commission's September 13, 2006, opinion and order satisfies the requirements of Section 4903.09, Revised Code, as well as the applicable case law. Rehearing is, therefore, denied.

- (10) In the company's sixth assignment of error, ValTech maintains that the Commission's determinations of technical non-compliance with the FCC rules on format and content of an LOA do not justify a determination that the submitted LOAs are invalid.

customers who testified in the proceeding, a review of the docket reveals that COI presented no such documentation. Therefore, the issue is moot and need not be further addressed on rehearing.

- (13) ValTech's final argument in support of its last assignment of error, is that the Commission's directive for ValTech to publish newspaper notice is not authorized as a remedy under the Commission's rules and regulations, is overly broad, unjust, and unreasonable. Moreover, ValTech asserts that a more effective notification would be direct notification to the involved subscribers. Pointing to record testimony and exhibits presented at the hearing, ValTech claims that such direct customer notification has already taken place. First, we do not agree with the premise of ValTech's argument that the Commission's authority to remedy acts of slamming is limited to the remedies outlined in Section 4905.73, Revised Code. Rather, Section 4905.381, Revised Code, affords the Commission, after hearing, ample authority to determine the rules, regulations, and practices that should be adopted and observed by a utility going forward. Thus, we find that it was not unreasonable for us, at the time, to have directed ValTech to notify other similarly situated subscribers that they could contact the Commission if they believed they may have been improperly switched between March and December 2004.

We now note, however, that under the FCC rules, records to document verification of subscriber carrier changes need only be maintained for two years after obtaining such verification. Given that more than three years, and in some cases four years, have passed since the circumstances that gave rise to this publication requirement occurred, it is highly unlikely that records documenting any perceived improper switch of service providers is still available to verify that an unauthorized switch occurred. Therefore, we will not require ValTech to fulfill the publication of notice requirement outlined in the September 13, 2006, opinion and order.

- (14) Finally, the Commission determines that any remaining assignments or allegations of error not specifically addressed in this entry on rehearing are denied.

4905.26 Complaints as to service.

Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall fix a time for hearing and shall notify complainants and the public utility thereof. Such notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

Upon the filing of a complaint by one hundred subscribers or five per cent of the subscribers to any telephone exchange, whichever number be smaller, or by the legislative authority of any municipal corporation served by such telephone company that any regulation, measurement, standard of service, or practice affecting or relating to any service furnished by the telephone company, or in connection with such service is, or will be, in any respect unreasonable, unjust, discriminatory, or preferential, or that any service is, or will be, inadequate or cannot be obtained, the commission shall fix a time for the hearing of such complaint.

The hearing provided for in the next preceding paragraph shall be held in the county wherein resides the majority of the signers of such complaint, or wherein is located such municipal corporation. Notice of the date, time of day, and location of the hearing shall be served upon the telephone company complained of, upon each municipal corporation served by the telephone company in the county or counties affected, and shall be published for not less than two consecutive weeks in a newspaper of general circulation in the county or counties affected.

Such hearing shall be held not less than fifteen nor more than thirty days after the second publication of such notice.

resolution of informal complaints of unauthorized changes of telecommunications providers.

- (D) Any subscriber or telecommunications provider whose complaint cannot be resolved informally may file a formal complaint under section 4905.26 of the Revised Code, regarding any violation of section 4905.72 of the Revised Code, or of this rule. If the commission finds, after notice and hearing, that a telecommunications provider has violated section 4905.72 of the Revised Code or this rule, the telecommunications provider shall be subject to the remedies provided for in section 4905.73 of the Revised Code.
- (E) All telecommunications providers that offer a PCF shall be required to do all of the following:
- (1) Offer PCF on a nondiscriminatory basis to all subscribers, regardless of the subscriber's provider selections;
 - (2) Unbundle its PCF so that subscribers can request the service for any combination of intraLATA, interLATA, or local services;
 - (3) Include, at least twice per year, in the bills of those subscribers who utilize a PCF, information indicating that a PCF applies, and to which services it applies;
 - (4) Refrain from attempting to retain a subscriber's account during the process of changing a customer's telecommunications provider selection to another telecommunications provider or otherwise to provide such information to its marketing staff or any affiliate; and
 - (5) Allow conference calls, during its normal customer service hours, among a subscriber, a submitting telecommunications provider, and the executing telecommunications provider, in order to effectuate a provider change for a subscriber who has PCF, as long as the subscriber consents.
- (F) A PCF change shall be effectuated immediately once verification of the subscriber's intent to request the change is received by any of three methods, i.e., through the three-way conference call, by the customer's written consent, or by the customer's electronically signed authorization.

state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

(c) Notification of receipt of complaint. Upon receipt of an unauthorized carrier change complaint, the relevant governmental agency will notify the allegedly unauthorized carrier of the complaint and order that the carrier remove all unpaid charges for the first 30 days after the slam from the subscriber's bill pending a determination of whether an unauthorized change, as defined by §64.1100(e), has occurred, if it has not already done so.

(d) Proof of verification. Not more than 30 days after notification of the complaint, or such lesser time as is required by the state commission if a matter is brought before a state commission, the alleged unauthorized carrier shall provide to the relevant government agency a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change, as that term is defined in §§64.1120 through 64.1130. The relevant governmental agency will determine whether an unauthorized change, as defined by §64.1100(e), has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

(e) Election of forum. The Federal Communications Commission will not adjudicate a complaint filed pursuant to §1.719 or §§1.720 through 1.736 of this chapter, involving an alleged unauthorized change, as defined by §64.1100(e), while a complaint based on the same set of facts is pending with a state commission.