

IN THE SUPREME COURT OF OHIO

STAMMCO, LLC
d/b/a THE POP SHOP, *et al.*

Plaintiffs-Appellees,

vs.

UNITED TELEPHONE COMPANY
OF OHIO, AND SPRINT NEXTEL
CORPORATION

Defendants-Appellants

Case No.: 2012-0169

On Appeal From the Fulton County
Court of Appeals, Sixth Appellate District,
Case No. 11FU000003

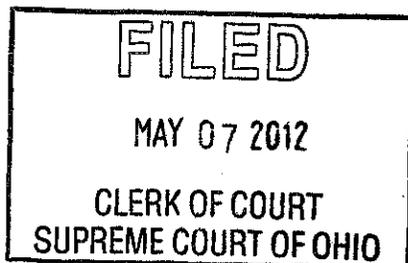
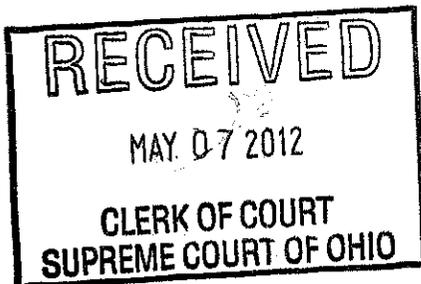
**APPELLEES' MOTION TO STRIKE
APPELLANTS' MOTION FOR RECONSIDERATION
OR, IN THE ALTERNATIVE, TO OVERRULE THE SAME**

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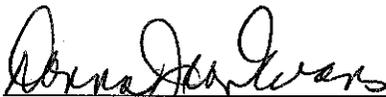
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Appellees move to strike Appellants' Motion to Reconsider Decision Not to Accept Discretionary Appeal, or in the alternative, Appellees move to deny same.



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MEMORANDUM IN SUPPORT

Appellants, United Telephone Company of Ohio and Sprint Nextel Corporation collectively “Sprint”), moved for reconsideration pursuant to Supreme Court Practice Rule 11.2(A). However, S.Ct.Prac.R.11.2(B) states that a motion for reconsideration may be filed only with respect to four specifically listed situations:

- (1) The Supreme Court’s refusal to grant jurisdiction to hear a discretionary appeal or the dismissal of a claimed appeal of right as not involving a substantial constitutional question;
- (2) The sua sponte dismissal of a case;
- (3) The granting of a motion to dismiss;
- (4) A decision on the merits of a case.

A motion for reconsideration may not be made to reargue the case. S.Ct.Prac.R. 11.2(B). Sprint’s Motion to Reconsider does not fall within any of these four listed exceptions.

Each and every one of Appellants’ arguments was previously raised, considered and rejected by this Court. Appellants merely restate their previous arguments, continually suggesting that the Court reconsider them and reverse the prior decisions. The Memorandum in Support of Motion for Reconsideration of Amicus Curiae Ohio Chamber of Commerce is nothing more than an untoward machination, once again, to attempt to politically attack the denial of review. It is an abuse of the reconsideration requirements, which if not stricken, should be overruled.

Appellants have not begun to discharge their burden for reconsideration. Sprint’s motion to reconsider is merely a reargument of the case and, accordingly, the rules should prevent this Court from considering it, even if some members of the Court might not be wholly persuaded that the original decision was correct. *State, ex rel. Gross v. Industrial Commission of Ohio*, 115 Ohio St.3d 249, 2007-Ohio-4916, 874 N.E.2d 1162, ¶79 (O’Connor, J., dissenting), citing *State, ex rel. Shemo v. Mayfield Hts.*, 96 Ohio St.3d 379, 2002-Ohio-4905, 775 N.E.2d 493, ¶9.

Supreme Court Practice Rule 11.2(D) states that “[t]he Clerk shall refuse to file a motion for reconsideration that is not expressly permitted by this rule”. This is such a motion. Because Sprint’s Motion to Reconsider does not meet the criteria for reconsideration under the rules, Appellees respectfully move that this Court strike the Motion as improperly filed.

Alternatively, should this Court deny Appellees’ Motion to Strike, Appellees request that it be overruled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing *Appellees' Motion to Strike Appellants' Motion for Reconsideration or, in the Alternative, to Overrule the Same* was forwarded by First-Class mail to the following:

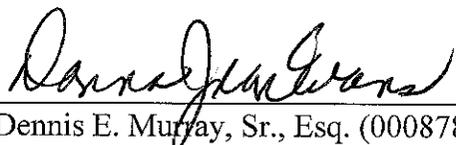
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on this 4TH day of May, 2012.



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