**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review )

Of Chapter 4901:1-6, of the Ohio ) Case No. 14-1554-TP-ORD

Administrative Code, Regarding )

Telephone Company Procedures and )

Standards. )

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**INITIAL COMMENTS OF OHIO TELECOM ASSOCIATION**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 Frank Darr (Reg. No. 0025469)

 McNees Wallace & Nurick LLC

 21 E. State Street, 17th Floor

 Columbus, Ohio 43215

 (614) 719-2855 (Direct Dial)

 (614) 469-4653 (Fax)

 fdarr@mwncmh.com

 (willing to accept service via email)

**July 17, 2019** **Attorneys for the Ohio Telecom Association**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review )

Of Chapter 4901:1-6, of the Ohio ) Case No. 14-1554-TP-ORD

Administrative Code, Regarding )

Telephone Company Procedures and )

Standards. )

**INITIAL COMMENTS OF OHIO TELECOM ASSOCIATION**

1. **Introduction**

On July 2, 2019, the Public Utilities Commission of Ohio (“Commission”) issued an entry containing several revisions to its proposed rules to implement R.C. 4927.10. While most of the revisions conform the proposed rules more closely to Ohio law,[[1]](#footnote-1) proposed Rules 4901:1-6-02(C) and 4901:1-6-07(J) seek to impose notice requirements to discontinuance of Voice over Internet Protocol (“VOIP”) that is not subject to Commission regulation. Ohio Telecom Association (“OTA”), therefore, recommends that the Commission remove the unlawful notice requirement from the revised proposed rules.

1. **Argument**

In the revised proposed rules, the Commission has introduced a new notice requirement for VOIP. New proposed Rule 4901:1-6-07(J) states that “[a] provider of voice service shall provide to the Commission and all affected customers not less than thirty days’ notice of any planned discontinuance of such service.” A proposed modification of Rule 4901:1-6-02(C) then extends the application of the notice requirement to VOIP service by “excepting” the notice requirement in proposed Rule 4901:1-6-07(J) from an exemption of VOIP from regulations contained in Chapter 4901:1-6.

Although R.C. 4927.07 provides the Commission some authority to require notice of withdrawal or abandonment of a telecommunications service by a telephone company, VOIP is exempted under R.C. 4927.03(A) from Commission regulation except in three defined instances. The three instances in which the Commission has authority over VOIP are for (1) enforcement of provisions of the Telecommunications Act of 1996, (2) mediation and arbitration as provided by the Telecommunications Act of 1996, and (3) “the protection, welfare, and safety of the public” if the Commission makes a finding that such regulation is “necessary.”[[2]](#footnote-2)

None of the three exceptions to the exemption authorizes the Commission’s proposed rule sweeping VOIP under a notice requirement.

* First, the notice requirement does not enforce any requirement of the Telecommunications Act of 1996.
* Second, the notice requirement does not implement mediation or arbitration authorized by the Telecommunications Act of 1996.
* Third, the Commission has not made any finding that the notice requirement is necessary for the protection, welfare, or safety of the public.

Nor would such a finding be justified and defensible. Simply put, VOIP is a competitive service. Given that alternatives to VOIP exist, the discontinuance of VOIP would not give rise to an issue concerning the protection, welfare, or safety of the public that requires a general assertion of Commission intervention. Thus, this attempted extension of Commission jurisdiction violates the express limitation on Commission authority over VOIP.

To conform the rules to the Commission’s lawful authority, the revised proposed rules should be modified in two ways.

* In Rule 4901:1-6-02(C), the word “rule” should be inserted after “except” and the phrase “rules 4901:1-6-07 (customer notice requirements) and” should be deleted.
* The first change would logically remove any express extension of authority to VOIP. To eliminate any doubt of the Commission’s intention to conform its rules to the jurisdictional limits imposed by R.C. 4927.03(A), however, the Commission should remove proposed Rule 4901:1-6-07(J).[[3]](#footnote-3)
1. **Conclusion**

In recognition of the competitive environment, the General Assembly has circumscribed the Commission’s scope of regulation of VOIP. Under R.C. 4927.03(A), the Commission may exercise regulatory authority in three defined areas. None of those areas justifies the Commission’s revised proposed rules requiring service providers of VOIP to provide notice of discontinuance of service. Accordingly, the Commission should adopt the modifications described in these Comments that would conform the rules to state law.

Respectfully submitted,

 */s/ Frank P. Darr*

 Frank Darr (Reg. No. 0025469)

 McNees Wallace & Nurick LLC

 21 E. State Street, 17th Floor

 Columbus, Ohio 43215

 (614) 719-2855 (Direct Dial)

 (614) 469-4653 (Fax)

 fdarr@mcneeslaw.com

 (willing to accept service via email)

**Certificate of Service**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission’s e-filing system will electronically serve notice of the filing of this document upon the interested parties. I hereby certify that a copy of the foregoing *Initial Comments of Ohio Telecom Association,* was served upon the following parties of record this 17th day of July 2019, *via* electronic transmission, hand-delivery, or first class U.S. mail, postage prepaid.

 */s/ Frank P. Darr*

 Frank Darr (Reg. No. 0025469)

|  |  |
| --- | --- |
| Mark OrtliebAT&T Ohio225 West Randolph Street, Floor 25DChicago, Illinois 60606mark.ortlieb@att.com**On Behalf of AT&T Services, Inc**. | Patrick M. CrottyCincinnati Bell Telephone Co. LLC221 East Fourth Street, Suite 1090Cincinnati, Ohio 45202Patrick.crotty@cinbell.com**On Behalf of Cincinnati Bell Telephone Co. LLC** |
| Gretchen PetrucciMichael J. SettineriVorys, Sater, Seymour and Pease LLP52 East Gay StreetColumbus, Ohio 43216glpetrucci@vorys.commjsettineri@vorys.com**On Behalf of the Ohio Cable Telecommunications Association** | Ellis JacobsAdvocates for Basic Legal Equality Inc.130 West Second St., Suite 700 EastDayton, Ohio 45402ejacobs@ablelaw.org**On Behalf of Edgemont Neighborhood Coalition** |
| Noel M. MorganLegal Aid Society of Southwest Ohio LLC215 E. Ninth St.Cincinnati, Ohio 45202nmorgan@lascinti.org**On Behalf of the Legal Aid Society of Southwest Ohio LLC** | Michael WaltersLegal Hotline Managing AttorneyPro Seniors, Inc.7162 Reading Road, Suite 1150Cincinnati, Ohio 45237mwalters@proseniors.org**On Behalf of Pro Seniors, Inc.** |
| Jeff JonesJay AgranoffAttorney ExaminersPublic Utilities Commission of Ohio180 E. Broad StreetColumbus, Ohio 43215Jeffrey.jones@puc.state.oh.usJay.agranoff@puc.state.oh.usKathy BuckleyVerizon1500 MacCorkle Ave, Box 3Charleston, WV 25304Kathy.L.Buckley@verizon.com | Peggy LeeSoutheastern Ohio Legal Services964 East State StreetAthens, Ohio 45701plee@oslsa.org**On Behalf of Southeastern Ohio Legal Services**Michael R. SmalzOhio Poverty Law Center1108 City Park Ave, Ste. 200Columbus, Ohio 43206msmalz@ohiopovertylaw.org |
| David VehslageVerizon3939 Blue Spruce Dr.Dewitt, Michigan 48820David.vehslage@verizon.com**On Behalf of Verizon** | William HaasT-Mobile2001 Butterfield Rd.Downers Grove, Illinois 60515William.haas@t-mobile.com**On Behalf of T-Mobile** |
| Bruce J. WestonOhio Consumers' CounselTerry L. EtterOffice of the Ohio Consumers' Counsel65 East State Street, 7th FloorColumbus, Ohio 43215Terry.etter@occ.ohio.gov**On Behalf of the Office of the Ohio Consumers' Counsel** | Christen M. Blend Porter Wright Morris & Arthur, LLP41 South High Street, 29th FloorColumbus, Ohio 43215cblend@porterwright.com**On Behalf of United Telephone Company of Ohio d/b/a CenturyLink and CenturyTel of Ohio, Inc. d/b/a CenturyLink** |

Barth E. Royer

Barth E. Royer, LLC

2740 East Main Street

Bexley, Ohio 43209

barthroyer@aol.com

**On behalf of CTIA-The Wireless**

**Association®**

Glen S. Richards

Voice on the Net Coalition

1200 Seventeenth St., NW

Washington, DC 20036

Glenn.richards@Pillsburylaw.com

1. Specifically, Attachment C contains modifications that delete proposed Rules 4901:1-6-21(F) and (G). [↑](#footnote-ref-1)
2. R.C. 4927.03(A) provides, in relevant part:

Except as provided in divisions (A) and (B) of section 4927.04 of the Revised Code and except to the extent required to exercise authority under federal law, the public utilities commission has no authority over any interconnected voice over internet protocol-enabled service or any telecommunications service that is not commercially available on September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010, unless the commission, upon a finding that the exercise of the commission's authority is necessary for the protection, welfare, and safety of the public, adopts rules specifying the necessary regulation. [↑](#footnote-ref-2)
3. Importantly, Rule 4901:1-6-07(B) continues to provide a requirement for a telephone company providing a telecommunications service (other than VOIP) to provide notice if it abandons or withdraws that service. Thus, the deletion of Rule 4901:1-6-07(J) also would remove a redundant provision. [↑](#footnote-ref-3)