

June 13, 2008

By Electronic Filing

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

RE: In the Matter of the Review of Chapter 4901:1-3 of the Ohio Administrative Code; PUCO Case No. 08-539-TP-ORD

Dear Ms. Jenkins:

The Ohio Telecom Association submits Comments for electronic filing in the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

/s/ Thomas E. Lodge

Enclosure

THE PUBLIC UTILITIES COMMISSION OF OHIO

COMMENTS OF THE OHIO TELECOM ASSOCIATION

Here, OTA suggests that a more thorough review of Rule 4901:1-3 is necessary to comport with the Governor's initiative. As proposed, the revisions suggested in the Commission's Entry provide only modest changes to the existing Rule 4901:1-3. While the existing Rule would be rescinded, the Entry proposes only to move the majority of the regulation to Rule 4901:1-6, while also adding a new regulation along the way. OTA submits that such an approach is inadequate. Instead, the Commission should ask:

- OTA addresses these issues in the following comments regarding each proposed rule.

Rule 4901:1-03-01 – Uniform Systems of Accounts for telephone companies

The Entry moved this section in its entirety to new Rule 4901:1-6-19, with some additions. The OTA submits that this rule should be rescinded altogether. The Rule is merely a reiteration of FCC requirements, but at that is severely outdated – it uses a \$5 million revenue cutoff for classification as Class A, instead of the current FCC rule which is indexed and presently in excess of \$100 million. *See* 47 C.F.R. §32.11. No purpose is served in duplicating a federal rule in Ohio regulation. Indeed, in recent rule-makings, the Commission itself found that incorporating FCC rules within state rules was cumbersome and problematic. *See In the Matter of the Review of Chapter 4901:1-6*, Case No. 06-1344-TP-ORD.

Further, the Entry’s new requirement to apply GAAP to CLECs and CTS providers is already addressed by Rule 4901:1-7-26(A)(2), and the requirement for ILECs to maintain the USOA is addressed in Rule 4901:1-4-05. Repetition here is unnecessary.

If the Commission nonetheless concludes that this rule is necessary, the rule should be limited to only a reference to the FCC requirements. Furthermore, ILECs that are operating pursuant to alternative regulation should be afforded the right to use GAAP rather than the USOA in order to achieve competitive parity.¹

4901:-1-3-02 – Administration, in borderline situation, of the boundaries of telephone companies

4901:1-3-03 – Z ones of operation, or service areas of the telephone companies.

The Entry proposes to combine these rules into 4901:1-6-20 and to re-title the Rule “Zones of operation, boundary changes, and administration of borderline boundaries.” In large part, to do so is no longer necessary.

¹ Consistent with this recommendation, Rule 4901:1-4-05 should be amended accordingly.

Subsections (A) through (D) of the Rule address and modify obligations to maintain and file boundary maps. The history of the telephone exchange boundaries goes back over one hundred years, to the inception of telephone service for each of the areas served. Since their establishment, boundaries have moved many times – either as between companies or within a company’s own territory. The companies maintained maps depicting these boundaries of the exchange in which they served, and provided copies to the Commission.

Today, however, companies have advanced state of the art technology to determine customer location and availability of telephone service in their areas. Competition has brought telecommunication providers who are not limited by boundaries, exchanges or service areas. As a result, and to further competitive parity, the Rules should contain no requirement to maintain or create these maps on the Commission’s website. Furthermore, no problem exists to warrant regulation – for example, the OTA is unaware of any issues with overlap customers that require Commission intervention, thus obviating the need to provide maps of overlap customers. Similarly, under the guidance of the rules set out in subsection (E), companies are able to informally settle boundary issues among themselves, and neither Commission intervention nor revised mapping rules are necessary.

As suggested above, two questions should be asked in determining whether the commission should continue to require and to regulate boundaries and maps: Are these rules necessary? Are they appropriate in today’s competitive telecommunications environment? The answer to both is “no.” Rules (A) through (D) have outlived their purpose and should be rescinded.

4901:1-3-06 – Filing by telephone companies of a copy of any contracts, agreements, notes, bonds, or other arrangements entered into between telephone companies or with any telephone management, service or operating company.

The Entry proposes to move the existing rule to Rule 4901:1-6-21, but also adds an altogether new rule for no stated reason. In the spirit of the Governor’s Executive Order, the Commission should ask: What makes this rule necessary or applicable to today’s environment? What purpose is served in filing “any contracts” and “all agreements” with the Commission? What need has been demonstrated? The OTA submits that no justification for the new rule exists.

The existing rule addresses Revised Code §4905.16. That statute contains two provisions: the first requires the filing of contracts “when and as required by the commission;” the second requires the filing of different contracts “unless otherwise ordered by the commission.” Thus, the former statutory obligation exists only if the commission directs, while the latter exists unless the commission excuses it by exemption. The Entry’s proposed Rule 4901:1-6-21(B) – like its predecessor – serves that latter purpose by exempting the filing of contracts with management, service or operating companies. Rule 4901:1-6-21(A), however, for the first time, and without any explanation, imposes the obligation of the first sentence of Revised Code §4905.16.

In this regard, the Entry appears to be stepping back into the past rather than making strides into the future. Rule revisions should not include more oversight or increased regulatory requirements, and certainly not without justification. None exists here, and the proposed new rule should be deleted.

4901:1-3-09 – Excess construction charges applicable to certain line extensions of the telephone companies

The Entry proposes to move this rule to 4901:1-6-22 and to re-title the Rule as “Excess construction charges applicable to certain line extensions for the furnishing of local exchange service.”

This Rule is also unnecessary and looks to be a throw-back to a time when ILECs were the only “game in town.” In the 21st century, line extension issues rarely occur, and Commission-approved tariffs resolve those that do arise. Further, while the Entry highlights that this rule applies to all LECs, in reality this rule only applies to ILECs. CLECs can simply choose not to serve a customer if facilities are not available, while ILECs must serve the customer as the carrier of last resort. The rule thus applies disproportionately and inequitably to ILECs. The OTA submits that the rule should be removed from the proposal.

If the Commission determines that a rule is still required in the area of excess construction charges, the OTA recommends employment of the term “public rights of way” in lieu of “highway rights of way.” It should be recognized that there are public areas beyond highways to which excess construction charges would apply. Additionally, if the rule is retained, OTA submits that the distance after which excess construction costs apply be reduced from ½ mile to 1/10 of a mile. Again, CLECs are not subject to these regulations as a practical matter – reducing the distance will reduce a burden that is placed only on the ILECs, and will therefore promote a more equitable market.

Conclusion

The Entry purports to observe the Governor's Executive Order, but then fails in the referenced rules to implement its directives. The Executive Order does not contemplate rules that are unnecessary or outdated, rules that discriminate among competitors, or rules introduced without justification or need. Accordingly, the OTA urges the Commission to consider the foregoing and to adopt rule consistent therewith.

Respectfully submitted,

OHIO TELECOM ASSOCIATION

By: /s/ Thomas E. Lodge
Thomas E. Lodge (0015741)

Thompson Hine LLP
10 West Broad Street, Suite 700
Columbus, Ohio 43215-3435
Telephone (614) 469-3200
Fax (614) 469-3361
Its Attorney

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/13/2008 11:42:40 AM

in

Case No(s). 08-0539-TP-ORD

Summary: Comments In the Matter of the Review of Chapter 4901:1-3 of the Ohio Administrative Code; PUCO Case No. 08-539-TP-ORD electronically filed by Carolyn S Flahive on behalf of Ohio Telecom Association