

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules to)
Implement Substitute Senate Bill 162.) Case No. 10-1010-TP-ORD

**Comments
of
tw telecom of ohio llc**

Introduction

By Entry dated July 29, 2010, the Public Utilities Commission of Ohio (“Commission”) issued for comment its staff’s proposed rules to effectuate Substitute Senate Bill 162 (“S.B. 162”) which revises state policy concerning the provision of telecommunications service within the State of Ohio. **tw telecom of ohio llc** (“TWTC”) is a facilities-based competitive local exchange carrier certified to provide local exchange telecommunications services to business customers in Ohio. TWTC hereby submits its comments as an interested stakeholder in this matter.

Comments

As a general matter, the staff’s proposed draft rules are faithful to the directive of SB 162 and TWTC supports their adoption by the Commission, with only a few exceptions. A discussion of those few exceptions follows.

4901:1-6-4 Application Process

The Staff’s proposed rules include an updated, streamlined general application process. However, the proposed process includes new, over-inclusive requirements that should be

restored to the status quo. The proposed application process now includes the following requirement:

- (3) The telecommunications application must be signed by an officer of the applicant, must be notarized, and must identify any agents or employees authorized to make filings on behalf of the application before the Commission

This is a significant change from the current application process rule at 4901:1-6-06, which contains no such blanket requirement. This addition to the application process rule appears to have been imported from current Rule 4901:1-6-10(A), addressing the requirements for applications for telecommunications service certification. Such officer verification and notarization may be appropriate for this type of application, but is unnecessary and burdensome for day-to-day filings that may require the Commission application form.

For example, TWTC has filed several applications to amend its certificate to include new exchange areas where time has been of the essence in obtaining numbering blocks from NANPA because NANPA will not release numbering resources unless and until the carrier can demonstrate authority to operate in those exchanges. The Commission has accommodated this time sensitivity by making such AAC filings zero-day filings, but the requirement that the carrier obtain the notarized, verified signature of an officer of the company for an otherwise “routine” matter would add needless delay and burden to the process, and it turn, cause a delay in the provision of service.

The inclusion of this blanket requirement is incongruous with the otherwise streamlined tenor of the draft rules. For this reason, TWTC urges the Commission to remove the above-cited rule provision from the general application section and restore that language to proposed Rule 4901:1-6-08(A).

4901:1-6-01 (J)

In Staff's proposed draft rules, the definition of "customer" has been modified slightly from the current definitions found at 4901:1-5-01(K) and 4901:1-7-01(E). The current definitions are essentially identical and provide as follows:

(E) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telecommunications provider [7-01(K): "telephone company"].

The proposed replacement of the current definitions reads as follows:

(J) "Customer" means any *end user*, person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company. (italics added)

The substantive difference between the prior definition and the newly-proposed definition is found with the insertion of the term "end user" before the listing of entities that may fit into the definition of "customer." While it may be useful to incorporate the concept of end use into the description of entities that may be considered in the definition of "customer" to further emphasize the retail aspect of this definition, the insertion of a comma after the term "end user" may inadvertently lead to unintended consequences and it should be removed.

By including a comma after the term "end user," the definition elevates this term to equal footing with the remaining list of entities. Instead, "end user" should be a modifier to the list of entities. The gist of the definition should be "any end user persons," any end users firms," etc. With the comma after "end user" the gist of the definition is "any end user, or any person, or any

firm or any etc.” The concept of an end user should modify the list of entities, rather than being included as an entity unto itself.

This may seem to be an overly-fine point, but the fact of the matter is that occasionally issues arise that involve casual end users of telecommunications services who are not in a customer relationship with the underlying carrier. While this proposed definition of “customer” also links “end user” with “and is responsible for paying charges and for complying with the rules and regulations” of the carrier and this linkage does eliminate much of the potential for confusion, it still remains the case that an “end user” will always be covered by the list of “persons, firms, partnerships, etc.”

The inclusion of “end user” in the definition of “customer,” however, is still useful to emphasize that this definition is a *retail* concept, rather than a carrier-to-carrier concept. However, the definition should be modified to read “any end user customer, firm, partnership,” etc., such that “end user” becomes a modifier to the list, rather than a member of the list.

4901:1-6-01(V) Nonresidential Service

Strictly as a matter of administrative housekeeping and since the rules are now open for review, TWTC recommends that the definition of “nonresidential service” be revised to mirror the definition of “residential service” since all telecommunications services fall into one category or the other. The Commission should consider changing the definition of “nonresidential service” to the following: “Nonresidential service” means a telecommunications service other than a Residential service.

The reasoning behind this recommendation is that the current definitions of “residential” and “non-residential” services are written in such a way that it is conceivable that an “other”

category could inadvertently arise. The current rules, common to both 4901:1-5-01 and 4901:1-6-01 are as follows:

(U) “Nonresidential service” means a telecommunications service primarily used for business, professional, institutional, or occupational use.

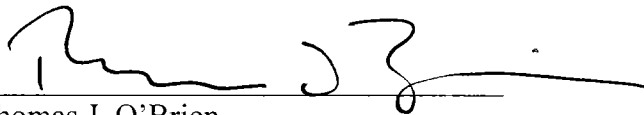
(DD) “Residential service” means a telecommunications service provided primarily for household use.

Standing alone, each definition is adequate to its task. However, since there is a single distinction in the rules between residential services and “all others,” it makes sense to structure the definitions accordingly. Since the definition of residential service carries the most significance under the Commission’s rules, it makes sense to key the definition of non-residential service off of the definition of residential service. This change to the definition of non-residential service would more accurately divide the universe into the two classes of service – residential, and “other”.

Conclusion

TWTC appreciates the opportunity to comment on the staff’s proposed draft rules and requests that the Commission carefully consider the modifications to that proposed draft rules provided herein.

Respectfully submitted on behalf of
tw telecom of ohio llc



Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2335
Facsimile: (614) 227-2370
E-Mail: tobrien@bricker.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/30/2010 2:15:21 PM

in

Case No(s). 10-1010-TP-ORD

Summary: Comments of tw telecom of ohio llc electronically filed by Teresa Orahod on behalf of TW TELECOM OF OHIO LLC