

BEFORE

THE PUBLIC UTILITIES COMMISSION

In the Matter of the Commission's)	
Review of Chapter 4901:1-6 of the Ohio)	
Administrative Code, Regarding)	Case No. 14-1554-TP-ORD
Telephone Company Procedures and)	
Standards.)	

INITIAL COMMENTS OF THE OHIO TELECOM ASSOCIATION

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I. INTRODUCTION

The Ohio Telecom Association (“OTA”) represents a broad range of companies offering landline, wireless, video, broadband and data services. OTA members are constantly investing and innovating to meet the ever-growing demand for advanced communications. Customers’ desires for additional and more advanced communications have led to a highly competitive marketplace in Ohio, with hundreds of companies selling voice, video, and data services to Ohio’s 11.6 million residents and 1 million businesses. The telecom companies in Ohio – phone, wireless, internet, and video providers – are having a multiplier effect on Ohio’s economy. They provide the foundation for all of the connected devices that are manufactured and sold, and they create a market for big data and the cloud. Furthermore, they create technology jobs for other businesses. To satisfy customers’ ever-growing demand for advanced communications and to continue to provide to Ohio’s economy, regulatory flexibility for telecom companies is a must.

In January 2013, the Federal Communications Commission (“FCC”) began implementing “Connecting America: a Plan to Reform and Modernize the Universal Service Fund and Intercarrier Compensation System.” Among the many rule changes, the FCC is phasing out its support programs for landline phone service and reallocating the funds for broadband deployment. In undertaking these changes, the FCC recommends that each state regulatory commission reconsider its regulations.

Many of Ohio’s telecom regulations predate wireless and internet services and instead are based upon an outdated telecommunications model that relied upon the old copper phone network to transmit communications. Advances in technology and competition have rendered many of these old regulations unnecessary. In some instances, these outdated regulations hinder competition and the advancement of Ohio’s technology sector and economy.

Against this background of change, advancement and competition, the OTA respectfully submits the following comments on the Rules proposed by the Staff of the Public Utilities Commission of Ohio (“Commission”) on January 7, 2015, regarding telephone company procedures and standards.

II. RECOMMENDED RULE CHANGES

A. Rule 4901:1-6-01(C), O.A.C. (Definition of BLES)

The OTA requests that the Commission clarify Rule 4901:1-6-01(C), Ohio Administrative Code (O.A.C.), to confirm that a residential customer that is provided multiple lines does not meet the statutory definition of basic local exchange service (“BLES”). The Commission’s Rule 4901:1-6-01(C), O.A.C., incorporates by reference the statutory definition of BLES contained in R.C. 4927.01(A)(1). The statutory

definition of BLES for a residential-end-user is limited to receiving that service over one line. Accordingly, the Commission should confirm that a residential customer subscribing to multiple lines whether as single lines or as part of a bundled package is not a BLES customer.

B. Rule 4901:1-6-02, O.A.C. (Purpose and Scope)

The Commission should modify Rule 4901:1-6-02(H), O.A.C., to provide that references to the United States Code or to the code of federal regulations are to the current effective version. Currently, the Commission's Rule incorporates by reference the version of the United States Code or code of federal regulations in effect on September 10, 2010. The Commission has previously agreed that it should revise its Rules to remove language that cites to statutes and regulations as of a date certain.¹

C. Rule 4901:1-6-07, O.A.C. (Customer Notice Requirements)

The OTA recommends that the Commission modify the notice requirements in Rule 4901:1-6-07, O.A.C., to explicitly limit its applicability to tariffed services regulated by the Commission. As drafted, the Rule could be interpreted as requiring telephone companies to report on changes to non-regulated and non-tariffed services and activities as the Rule requires disclosure of "any material change in the rates, terms, and conditions of a service and any change in the company's operations that are not transparent to customers and may impact service." Rule 4901:1-6-07, O.A.C. (emphasis added). Accordingly, the Commission should revise the Rule and explicitly narrow its scope to only changes in regulated and tariffed operations and services of telephone companies.

¹ See *In the Matter of the Commission's Review of Chapter 4901:1-7, of the Ohio Administrative Code, Local Exchange Carrier-to-Carrier Rules*, Case No. 12-922-TP-ORD, Finding and Order at 4, Attachment A at 4 (Oct. 31, 2012).

D. Rule 4901:1-6-14, O.A.C. (BLES Pricing Parameters)

1. Provision (H)(2) Nonrecurring Charges

The OTA also recommends that the Commission modify Rule 4901:1-6-14(H)(2), O.A.C. The current Rule provides for the introduction of a nonrecurring service charge, surcharge or fee to BLES by a competitive local exchange company ("CLEC"), but does not provide similar authority for an incumbent local exchange company ("ILEC"). There is no basis for such a differentiation in the law. Only the monthly *recurring* charges for BLES are governed by R.C. 4927.12, while other nonrecurring fees are not so governed. Such fees are required only to be tarified. Because nonrecurring fees are not governed by R.C. 4927.12, an increase in such rates could not trigger an impermissible increase in BLES rates. Accordingly, the Commission should modify Rule 4901:1-6-14(H)(2), O.A.C.

2. Provision (I) BLES Late Payment Charges

The OTA requests that the Commission modify Rule 4901:1-6-14, O.A.C., deleting provision (I) from the Rule, which addresses late payment charges for BLES. The statute that addresses BLES pricing parameters, R.C. 4927.12, however, does not explicitly authorize the Commission to regulate late payment charges for BLES. Additionally, in its Business Impact Analysis the Commission references R.C. 4901.13 and R.C. 4927.03, as providing the Commission with authority to issue Rule 4901:1-6-14, O.A.C. Like R.C. 4927.12, neither R.C. 4901.13 nor R.C. 4927.03 explicitly provides the Commission with authority to regulate late payment charges for BLES.

Furthermore, late payment charges are not included in the definition of BLES and are not inherently part of providing BLES. State policy favors reliance on market forces to maintain reasonable service levels and rates and thus weigh against the Commission

regulating late payment charges for BLES. R.C. 4927.02(A)(3). The Commission has applied this policy to other discretionary charges and services, thus allowing market forces to work. The Commission should apply the same standard to BLES late payment fees.

Because the Commission's statutory authority is silent in regards to the Commission's authority to regulate late payment charges for BLES, and because the Commission's prior decisions and state policy weigh against regulating late payment charges for BLES, the Commission should delete provision (I) from Rule 4901:1-6-14, O.A.C.

3. Provision (J) BLES Installation and Reconnection Fees

The OTA requests that the Commission modify provision (J) to Rule 4901:1-6-14, O.A.C., to remove the cap on BLES installation and reconnection fees. Neither R.C. 4927.12, the statute addressing the Commission's authority to regulate BLES, nor R.C. 4901.13 nor 4927.03, the statutes cited by the Commission as authority to issue Rule 4901:1-6-14(J), O.A.C., provide for a cap on BLES installation and reconnection fees. R.C. 4927.12(F) only requires that the Commission adopt rules that result in the tariffing of the fees for installation and reconnection:

[t]he rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service shall be tariffed in the manner prescribed by rule adopted by the commission.

The statute does not direct the Commission to establish a cap on fees for installation and reconnection of BLES service.

Furthermore, as discussed in the Introduction above, the Commission should strive to ensure that it promulgates rules that allow for increased regulatory flexibility.

The telecom marketplace in Ohio is highly competitive, with hundreds of companies selling voice, video, and data services to Ohio's 11.6 million residents and 1 million businesses. Regulations that impose unnecessary restrictions on competition and market rates hinder competition and innovation over the long term.

Accordingly, the Commission should revise Rule 4901:1-6-14(J), O.A.C., to remove the cap on BLES installation and reconnection fees.

4. Multiple Yearly Rate Increases

The OTA requests that the Commission clarify that Rule 4901:1-6-14, O.A.C. allows for multiple rate increases per year so long as the rate increases do not exceed the \$1.25 cap per customer. Specifically, if a telephone company increases BLES rates for only residential customers by \$1.25, the Commission should clarify that it is still possible to seek to increase business rates by up to \$1.25 that same year whether in the same exchanges or not. Similarly, the Commission should clarify that if a telephone company raises all customers' BLES rates by \$0.75 in a year it is still permissible to raise rates another time during that year so long as the total yearly increase does not exceed the \$1.25 rate cap whether the increases are in the same exchanges or not.

E. Rule 4901:1-6-15 (Directory Information)

The OTA requests that the Commission modify Rule 4901:1-6-15, O.A.C., such that the Rule provides that a local exchange carrier ("LEC") may provide a telephone directory in any reasonable format. This would remove the requirement to make telephone directories available, free of charge, in printed form. R.C. 4927.01(A)(1)(b)(vi), provides that a LEC needs to make available a telephone directory in any reasonable format free of charge. The Statute does not require that a printed copy be made available free of charge if alternative reasonable formats exist.

Furthermore, the current telecommunications environment has advanced to a point where it no longer makes sense to require LECs to provide printed copies free of charge.

Alternatively, if the Commission retains its Rule such that customers may request printed directories, the OTA requests that the Commission modify Rule 4901:1-6-15(B), O.A.C., to allow a LEC to charge customers for printed copies. Allowing a charge for printed directories would further the practices established by the Commission in 4901:1-1-01, O.A.C., that allows public utilities to charge customers for providing printed copies of tariffs, contract, and regulations, while copies made available electronically are free of charge.²

F. Rule 4901:1-6-19, O.A.C. (Lifeline Requirements)

The Commission should modify part (L) of Rule 4901:1-6-19, O.A.C., to shorten the 60-day timeframe to 30 days. In an Entry on Rehearing in Case No. 10-2377-TP-COI dated June 20, 2012, the Commission found that "all eligible telecommunications carriers ("ETCs") shall de-enroll Lifeline subscribers who fail to demonstrate their continued eligibility for Lifeline benefits consistent with the time frames set forth by the

² Rule 4901:1-1-01, O.A.C.:

Upon a consumer's request, a public utility shall provide a copy of the consumer's contract or of the company's applicable tariffed rules and regulations in the format requested by the consumer, i.e., via e-mail, internet website, fax, or first class mail. Unless the consumer agrees to another date, the public utility shall provide the information within five business days. Paper copies of any items requested shall be provided at cost. This rule does not apply to any industry for which the commission has prescribed a more specific rule regarding the requirement to make available a company's tariff.

(emphasis added).

FCC.”³ The Commission further noted that 47 C.F.R § 54.405 limits the period a customer has to demonstrate continued eligibility to 30 days. Accordingly, the Commission should change the 60 days noted in part (L) of the proposed Rules to 30 days, consistent with the FCC Rules and the Commission’s prior Entry on Rehearing.

The Commission should also modify or delete part (M) of the proposed Rule. The FCC requirement to de-enroll subscribers for non-usage does not apply to carriers who collect a monthly fee from subscribers. Rather, the FCC regulation is intended to address issues with pre-paid Lifeline services where no fees are charged to the subscribers. 47 C.F.R. § 54.405 (e)(3). Consistent with federal regulations, part (M) of the proposed Rule should be deleted (with the deleted language moved to part (T) which addresses competitive eligible telecommunications carriers ("CETC")) or part (M) should be modified such that part (M) refers to CETCs and not ILECs.

Finally, the Commission’s proposed Rule 4901:1-6-19, O.A.C., needs updated to account for other modifications that were contained in the proposed Rule and for OTA’s proposed deletion of part (M). For example, part (P) of the proposed Rule references paragraphs (P)(1) and (P)(2), and the correct reference should be to paragraphs (O)(1) and (O)(2). The same update needs to be made in part (Q) of the proposed Rule. The reference in part (T)(1) of the Rule to lifeline requirements also needs to be revised to remove the reference to paragraph (J). Paragraph (J) addresses an ILEC ETC.

G. Rule 4901:1-6-31, O.A.C. (Emergency and Outage Operations)

OTA requests that the Commission modify Rule 4901:1-6-31, O.A.C., so that it mirrors the reporting requirements of the FCC regarding emergency and outage

³ *In the Matter of the Commission Investigation into the Provision of Nontraditional Lifeline Service by Competitive Eligible Telecommunications Carriers.*, Case No. 10-2377-TP-COI, Entry on Rehearing at 1-3 (June 20, 2012).

conditions. Commission Rule 4901:1-6-31, O.A.C., provides that the Commission will utilize existing FCC Rules applicable to emergency and outage operations; however, the Commission's Rule then continues for several additional pages containing numerous additional provisions. To reduce unnecessary administrative complexity and potential additional reporting burdens, the Commission should modify Rule 4901:1-6-31, O.A.C., by deleting provisions (B) through (G).

Any additional provisions in this Rule will create unnecessary administrative requirements that will either be duplicative of the FCC's requirements or will differ from the FCC's requirements creating additional and unnecessary administrative burdens and unnecessary complexity.⁴

III. CONCLUSION

For the reasons identified above, the OTA respectfully requests the Commission to adopt the recommendations made herein that will provide additional flexibility and will reduce unnecessary administrative complexity and burdens.

Respectfully submitted,

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⁴ See Commission Entry, Attachment B at 4 (Jan. 7, 2015).

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