BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

I. Introduction

The Ohio Cable Telecommunications Association ("OCTA" or "Association") represents the members of Ohio's cable industry. On February 6, 2015, the OCTA filed its Initial Comments in the review of Ohio Administrative Code ("O.A.C.") 4901:1-6 and filed Reply Comments in this proceeding on March 6, 2015. By Entry issued on September 23, 2015, the Public Utilities Commission of Ohio ("Commission") issued for comment proposed rules prepared by the Commission Staff as further revisions to O.A.C. 4901:1-6 to implement Ohio Revised Code ("O.R.C.") §§4927.10 and 4927.101 and amendments to existing sections of O.R.C. Chapter 4927 as required by Amended Substitute House Bill 64 ("H.B. 64") of the 131st Ohio General Assembly. The statutory sections added to O.R.C. Chapter 4927 and amendments of existing sections by H.B. 64 were generally to address the issues of carrier of last resort ("COLR").[1]

As previously indicated in this proceeding, some OCTA members offer, or may in the future offer, telephone service using a switched network, offer or may offer voice service through internet protocol-enabled services and broadband networks and may utilize the services or facilities of incumbent local exchange carriers ("ILECs") or competitive local exchange carriers ("CLECs") in offering these services. Therefore, the Association, on behalf of its members, is an interested person and offers these Initial Comments to the COLR Rules. While the OCTA will offer comments on some of the COLR Rules proposed by the Commission's Staff, its failure to comment on a particular

[1] To distinguish from the January 7, 2015 suggested revisions in the retail rule review, the proposed rules attached to the September 23, 2015 Entry will be referred to as the "COLR Rules".

COLR Rule or suggested revision does not necessarily reflect its endorsement of any of the proposed COLR Rules.

II. General Comment

The main operating budget bill for the State of Ohio for 2016-2017, H.B. 64, was signed into law earlier this year. That legislation contained revisions to O.R.C. Chapter 4927, primarily to add O.R.C. §4927.10 to the Ohio Revised Code. Once certain events occur and conditions are met, O.R.C. §4927.10 removes the prohibition against an ILEC withdrawing or abandoning basic local exchange service ("BLES") and removes the ILEC's COLR obligations. More specifically, under O.R.C. §4927.10, once the Federal Communications Commission ("FCC") adopts an order that allows ILECs to withdraw the interstate access component of BLES, then *in any exchange* where the ILEC withdraws the interstate access component, the ILEC can give 120 days' notice to withdraw or abandon BLES.

The more specific procedures for removing ILEC COLR obligations are contained in O.R.C. §4927.10(B). This section provides that once an ILEC gives notice of withdrawing BLES, affected consumers may file petitions with the Commission indicating that the consumer will be unable to obtain "reasonable and comparatively priced voice service" upon the ILECs withdrawal of BLES.[2] If the Commission determines after an investigation that no alternative "reasonable and comparatively priced voice service" will be available, it shall attempt to identify "a willing provider" of "reasonable and comparatively priced voice service". If no "willing provider" is identified, the Commission may order the withdrawing or abandoning ILEC to continue to provide "reasonable and comparatively priced voice service". The willing provider or ILEC may utilize any technology or service arrangement to provide the voice service.

The rule revisions proposed by Staff to implement H.B. 64 revisions to O.R.C. Chapter 4927 include a new rule 4901:1-6-21 ("COLR Rule"), new notice obligations in O.R.C. §4927.07, additional assessments and new or revised definitions. Some of the proposed Staff revisions and the COLR Rule contain provisions that are inconsistent with or go beyond the statutory authority in O.R.C. §4927.10. These revisions and the new COLR Rule, as proposed, would impose obligations on the "willing provider" that do not exist currently, are not authorized by O.R.C. §4927.10 or other

[2] H.B. 64 provides for the creation of a collaborative to address the internet-protocol network transition. In addition, this collaborative is to review BLES in Ohio and identify residential BLES customers who will be unable to obtain voice service once BLES is withdrawn. Any customers determined by the collaborative to fit into this category will be deemed to have filed a petition under R.C. 4927.10(B) upon notice of withdrawal of BLES.

revisions implemented by H.B. 64, and are not authorized by law existing before the enactment of H.B. 64. These proposed rules exceed the agency's statutory authority and conflict with legislative intent.

The OCTA provides the following comments to the proposed Staff rules, with suggestions to revise the proposed Staff rules for consistency with revised O.R.C. Chapter 4927.

III. Specific Comments on the Proposed Rule Revisions and the COLR Rule

A. *Rule 4901:1-6 -01(F).* "Carrier of last resort" is defined as an ILEC or successor telephone company that is required to provide BLES on a reasonable and non-discriminatory basis to all persons or entities in its service area requesting that service as set forth in O.R.C. §4927.11.

Comment: As proposed, this definition indicates that a "successor telephone company" would be required to provide BLES. O.R.C. §4927.11(A) only requires an ILEC to provide BLES, which is now subject to O.R.C. §4927.10. It is unclear what the Staff is intending by the inclusion of the term "successor telephone company" in this definition. If the inclusion of "successor telephone company" is intended to include an alternative provider or a "willing provider", that could result in the establishment of BLES and other requirements that are inconsistent with the statutory obligations in O.R.C. §4927.10.

The definition of "ILEC" already includes a person or entity that becomes a successor or assignee of a member of the exchange carrier association, as set forth in O.R.C. §4927.01(A)(5), and, therefore, the carrier of last resort definition does not need to separately refer to a successor. It would also cause confusion to separately list "successor telephone company" in the carrier of last resort definition, and omit an assignee. It implies something other than an ILEC, which we noted in the paragraph above is problematic. In addition, there is a reference to "successor telephone company" in subsection (B)(3) of O.R.C. §4927.11, but that only relates to limitations on the ILEC obligations to construct facilities or provide BLES to multitenant facilities if the owner, operator or developer favors any other

telecommunications provider in the manner specified in the statute.[3] While there is a reference to a successor telephone company in subsection (B)(3) for the multitenant facility, that provision does not impose a carrier of last resort obligation and does not justify adding "successor telephone company" to the definition of carrier of last resort. Further, the proposed change to the carrier of last resort definition includes an obligation to provide BLES to entities. Carrier of last resort obligations within O.R.C. §4927.10(B) are limited to residential customers. This rule exceeds the Commission's statutory authority and goes against the intent of the legislature as expressed in the language of O.R.C. §4927.10.

Proposed revision: The proposed definition should be revised as follows: "'Carrier of last resort' means an ILEC ~~or successor telephone company~~ that is required to provide basic local exchange service on a reasonable and non-discriminatory basis to all residential customers ~~persons or entities~~ in its service area requesting that service as set forth in section 4927.11 of the Revised Code."

B. *Rule 4901:1-6 -01(QQ).* This section defines "willing provider" as any provider of reasonable and comparatively priced voice service offering that service to any residential customer affected by the withdrawal or abandonment of BLES (or voice service) by an ILEC (or willing provider).

Comment: In this definition, the Staff starts its imposition of requirements on the withdrawal or abandonment of voice service that is provided in place of BLES; the creation of these requirements in the proposed Rules exceeds the statutory authority of the Commission and the intent of the legislature.

There is concern that the Staff has confused "carrier" with a willing or alternative provider. The reference to "carrier" throughout O.R.C. §4927.10 is made clear in O.R.C. 4927.10(A)(1) which addresses what shall no longer apply to an ILEC once the FCC takes

[3] The "favoring" would be permitting only one provider of telecommunications services in the development phase of the multitenant real estate or accepting incentives for exclusivity of service or collecting telecommunications service charges as part of the rent.

action on the interstate access component of BLES. This subsection provides that "[t]he prohibition contained in division (D) of section §4927.07 of the Revised Code against the withdrawal or abandonment of basic local exchange service *by an incumbent local exchange carrier*, [shall no longer apply] provided that *the carrier* gives at least one hundred twenty days' prior notice to the public utilities commission and to its affected customers of the withdrawal or abandonment." The general assembly intended the use of "carrier" throughout O.R.C. §4927.10 to only be a shortened version of ILEC. It did not intend to extend the term "carrier" to include a willing or alternative provider.

In O.R.C. §4927.10, once an ILEC provides notice of abandoning or withdrawing BLES, the Commission is to first determine, after an investigation, if there are alternative providers of "reasonable and comparatively priced voice service" available. There are no new obligations imposed on these alternative providers in O.R.C. §4927.10 or elsewhere. This should be clarified in the Rules.

Secondly, in O.R.C. §4927.10, if the Commission finds there are no alternative providers, then it is to try to find a "willing provider" – clearly intended to be voluntary.[4] The proposed definition and the use of it throughout the COLR Rule and revisions proposed by Staff make clear that additional *ultra vires* obligations would be imposed on the "willing provider". There is no such requirement in O.R.C. §4927.10 or otherwise that imposes obligations on the withdrawal or abandonment of voice service that is being provided by a willing provider. O.R.C. §4927.10 only addresses prohibitions and obligations for an ILEC to be able to abandon BLES. Further, the definition of voice service in O.R.C. §4927.01(A)(18) specifically provides that voice service is not the same as BLES. Voice service currently has no COLR obligations and the implementation of O.R.C. §4927.10 did not impose any such obligations on voice service beyond those possibly imposed on an ILEC in O.R.C. §4927.10(B)(2).

[4] The plain, ordinary meaning of "willing" is "done, made or given by choice." Merriam-Webster (2015), available at http://www.merriam-webster.com/dictionary/willing (accessed October 23, 2015).

Moreover, the legislature did not intend "willing provider" to become a defined term. Had it so wished, it would have provided a definition – which it did not. As used in the statute, willing provider should be given its plain, ordinary meaning.

Proposed revision: The definition should be eliminated and "willing provider" be given its plain, ordinary meaning.

In the event that the Commission finds that a definition is needed, then the proposed definition should be revised to read that a willing provider "is any provider of a reasonable and comparatively priced voice service ~~offering~~ voluntarily offering that service to residential customers affected by the withdrawal or abandonment of BLES ~~(or voice service)~~ by an ILEC ~~(or other willing provider)~~. An alternative provider of reasonably and comparatively priced voice service in an ILEC's service area shall not be deemed a "willing provider".

C. *Rule 4901:1-6-02(C) and (D).* In these sections, the Staff has added that interconnected voice over internet protocol-enabled service ("IP-enabled service") and telecommunications services employing technology that became commercially available after September 13, 2010 ("New Technology") are subject to O.A.C. 4901:1-6-21, the COLR Rule.

Comment: It is unclear in the proposed rule revisions how O.A.C. 4901:1-6-21 would specifically apply to IP-enabled services or New Technology. It is assumed the Staff anticipates O.A.C. 4901:1-6-21 would apply if those technologies are used by a willing provider in an exchange where the ILEC is withdrawing BLES. These obligations, however, are not authorized by the statutory revisions in H.B. 64. There would be even greater concern if O.A.C. 4901:1-6-21 would apply to alternative providers of voice service within an exchange where the ILEC is withdrawing BLES. As noted above, the general assembly intended the use of "carrier" throughout O.R.C. §4927.10 to only be a shortened version of ILEC. It did not intend to extend the term "carrier" to include a willing or alternative provider. Further, O.R.C. §4927.10 only addresses prohibitions for an ILEC to abandon BLES and does not impose any new obligations on IP-enabled services or New Technology.

Having proposed O.A.C. 4901:1-6-21 apply to IP-enabled services and New Technology would impose obligations, as more fully discussed below, that were not authorized by the revisions the O.R.C. Chapter 4927 in H.B. 64 and that are counter to the legislature's intent.

In addition, these suggested revisions would subject the "willing provider" and possibly the alternative providers using IP-enabled services or New Technology in exchanges where the ILEC is withdrawing BLES to the jurisdiction of the Commission. O.R.C. §4927.03 is very clear that the Commission has no authority over any IP-enabled service or New Technology, unless the Commission finds that the exercise of its authority is necessary for the protection, welfare and safety of the public. No such finding has occurred.

Proposed revision: The extension of obligations in O.A.C. 4901:1-6-21 to IP-enabled services or New Technology in proposed O.A.C. 4901:1-6-02(C) and (D) should be removed.

D. *Rule 4901:1-6-07.* This rule imposes notice requirements on "willing providers" of voice service that intend to subsequently withdraw the voice service in an exchange where the ILEC has withdrawn or abandoned BLES. The specific notice requirement imposed on the "willing provider" goes beyond the 15 days advance notice to affected customers of any material change in rates, terms, and conditions for other than BLES services. As revised, this Rule would require "willing providers" of voice service to give 120 days' advance notice before withdrawing voice service and appears to require an application to withdraw the voice service. The notice must explain the impact of the application and any action the customer may take and must be provided by mail.

Comment: The proposed notice obligations on voice service provided by a "willing provider" in an exchange where the ILEC has abandoned or withdrawn BLES in proposed O.A.C. 4901:1-6-07(A and C) go beyond the statutory authority provided to the Commission in O.R.C. §4927.10 and are counter to the legislative intent. There is nothing in O.R.C. §4927.10 or otherwise that imposes new obligations on voice service provided by a "willing provider". O.R.C. §4927.10 only addresses prohibitions and requirements for an ILEC

abandoning or withdrawing BLES. The definition of voice service in O.R.C. 4927.01(A)(18) specifically provides that voice service is not the same as BLES, further supporting that obligations imposed in O.R.C. §4927.10 were not intended to apply to voice service. Voice service currently has no COLR obligations or additional notice obligations beyond those imposed on all services other than BLES. The implementation of O.R.C. §4927.10 did not impose any such new obligations on voice service.

Proposed revision: In O.A.C. 4901:1-6-07(C) and (A), the reference to voice service and willing provider should be removed.

E. *Rule 4901:1-6-21*. This new Rule sets up the process by which an ILEC can withdraw or abandon BLES. Most of the Rule addresses procedures affecting only ILECs. However, the Staff has added procedures and language that will have an impact on the "willing provider" providing voice service in an exchange where the ILEC has abandoned or withdrawn BLES. By way of example, the concerning provisions include how a "willing provider" can subsequently withdraw or abandon voice service and obligations imposed on the "alternative provider" that do not otherwise exist. The specific concerns are addressed in the following comments.

Comments:

i. Rule 4901:1-6-21(A)(2). This proposed Rule includes a requirement for the ILEC that is abandoning or withdrawing BLES to identify potential "willing providers" in its notice to customers. Based on O.R.C. §4927.10(B), putting this information in the notice to customers would be premature. Rather, the notice provided by the ILEC should at most identify one or more alternative "reasonable and comparatively priced voice service" providers that are available. Under the statute, it is then the Commission's role to determine whether there are affected customers in exchanges/areas who have no alternative "reasonable and comparatively priced voice service". It is unclear how the ILEC will know if a provider of voice service is willing to provide service in the area specified at the time a notice would be published or sent to customers.

Proposed revision: The requirement for the ILEC to identify "willing providers" in its application to abandon or withdraw BLES should be removed from Rule 4901:1-6-21(A)(2).

ii. Rules 4901:1-6-21(B), (C), (D), (E) and (G). Rule 4901:1-6-21(B) requires that all "willing providers" file an application to withdraw voice service 120 days in advance of such withdrawal and provide notice to affected customers, including publication of the notice. The "willing provider" must demonstrate that one alternative provider offers reasonable and comparatively priced voice service to affected customers. Further, this subsection requires all "willing providers" discontinuing voice service to comply with some of the abandonment requirements of Rule 4901:1-6-26, including returning deposits, filing an application to abandon and providing lists of assigned area code prefixes or thousands blocks. Subsections (C), (D) and (E) impose additional requirements on "willing providers" that later withdraw voice service from an exchange. Subsection (G) requires that an affidavit attesting to being a "willing provider" be filed in the ILECs or "willing provider's" case to abandon BLES or voice service.

Comments: There are several issues with these requirements. First, and most important, the proposed Rules would effectively turn the "willing provider" into a COLR. There is nothing in O.R.C. §4927.10 or otherwise that imposes such obligations on voice service provided by a "willing provider" or that authorizes the Commission to do so. O.R.C. §4927.10 only addresses prohibitions and requirements for an ILEC abandoning or withdrawing BLES. Second, the definition of voice service in O.R.C. 4927.01(A)(18) specifically provides that voice service is not the same as BLES. Voice service currently has no COLR obligations or additional notice obligations and the implementation of O.R.C. §4927.10 did not impose any such obligations on voice service. Although, it is assumed to be a typo, in subsection (E), the proposed Rule would impose withdrawal and abandonment obligations on an alternative provider of voice service. There is clearly no authority to impose these additional obligations on non-ILEC providers of voice service under O.R.C. §4927.10.

As to imposing obligations of Rule 4901:1-6-26 on the "willing provider" that is withdrawing voice service in an exchange, that Rule relates only to a telephone company seeking to abandon entirely telecommunications service in Ohio. Withdrawing voice service in one or several exchanges in Ohio when providing voice service as a "willing provider" is not abandoning all services, so the requirements being imposed do not appear to be justified.

Further, Rule 4901:1-6-26 applies to a telephone company, and that term has a specific meaning under Chapter 4927 – the entity must also be a public utility under O.R.C. §4905.02. A "public utility" in O.R.C. §4905.02 specifically excludes any provider, including a telephone company, with respect to advanced service, broadband service, information service, IP-enabled services (subject to O.R.C. §4927.03) and New Technology (subject to O.R.C. §4927.03). Depending on the technology used by the "willing provider" to provide the voice service, it is very possible that the "willing provider" may not be a telephone company. Obligations imposed on a telephone company cannot, under statute, be imposed on a "willing provider" if the provider does not otherwise qualify as a telephone company.

Proposed revision: The references to willing provider and requirements for the withdrawal of voice service should be removed from subsections (B), (C), (D), (E) and (G) of Rule 4901:1-6-21. The imposition of withdrawal and abandonment obligations on alternative providers in subsection (E) must be removed.

iii. Rules 4901:1-6-21(F), (H) and (I). Subsection (F) provides that IP-enabled service or New Technology provided as voice service by a "willing provider" shall be subject to the abandonment and withdrawal obligations of Rule 4901:1-6-21. Subsections (H) and (I) require "willing providers" to send notices to the department of taxation, the public utilities tax division, file an annual report under O.R.C. §4905.14 and pay assessments under O.R.C. §4905.10 (for the Commission) and §4911.18 (for the Ohio Consumers' Counsel).

Comments: With respect to Subsection (F), O.R.C. §4927.03 is very clear that the Commission has no authority over any IP-enabled service or New Technology, unless the Commission finds that the exercise of its authority is necessary for the protection, welfare and safety of the public. No such finding has occurred. Likewise, O.R.C. §4927.10 does not provide the authority or justification to impose regulatory obligations on "willing providers" that choose to use IP-enabled service or New Technology to provide voice service.

As to all three subsections, the new statute (O.R.C. §4927.10) expressly states that a willing provider can use any technology or service arrangement (not just those subject to Commission authority) to provide voice service to the customer affected by the ILEC's withdrawal/abandonment of BLES. It is very possible that the "willing provider" may use a technology to provide voice service that excludes it from the definition of a telephone company or a public utility under Ohio law. It is never stated in O.R.C. §4927.10 that a "willing provider" steps into the ILEC's shoes or that volunteering to serve an affected customer subjects the "willing provider" to the wide array of utility regulations imposed on a telephone company in Ohio.

As such, O.R.C. §4927.10 does not provide the authority to establish administrative rules that require a Commission registration process, notice to the Ohio department of taxation, payment of annual assessment, and reporting for "willing providers" that would not otherwise be subject to these requirements as a telephone company. If a "willing provider" is already subject to these requirements as a telephone company, it will continue to comply. If the "willing provider" is not subject to these requirements due to the technology it is using to provide voice service, then there is nothing in O.R.C. §4927.10 that provides the Commission with this authority. The introduction of O.R.C. §4927.10 alone is not a sufficient basis to impose Commission authority over telecommunications services that are not subject to Commission authority, and the legislature certainly did not intend such.

Proposed revision: Subsections (F), (H) and (I) of Rule 4901:1-6-21 should not be adopted.

IV. Comments on the Business Impact Statement

The OCTA also takes issue with several provisions in the proposed Business Impact Statement (BIS) attached to the September 23, 2015 Entry. Overall, the COLR Rules as proposed will have an adverse impact on business which is not justified.

The response to paragraph 14(a) of the BIS indicates that only regulated telephone companies and their customers are impacted by this proposed rule. However, as explained above, these rules will impact all Ohio providers of telephony service, not just regulated entities.

The OCTA also takes issue with the response to paragraph 14(b). The proposed COLR rules, by creating a newly devised regulatory scheme for willing providers, places a regulatory burden on non-ILEC providers that did not exist before and is not authorized by statute. The adoption of these new rules in many instances will be tantamount to the Commission extending its jurisdiction over providers which the legislature has specifically exempted from Commission jurisdiction. Further, this administratively created regulatory scheme is not needed to implement the law.

In the responses to both paragraphs 14(c) and 15, the Commission indicates that there will be no new impacts from the adoption of the COLR rules. This could not be farther from the result of the proposed Rules. Rule 4901:1-6-21 is replete with new requirements, new authorizations, new financial assessments, new reports, etc., that companies that are swept into the proposed new definition and requirements of "willing provider" and that are not a "public utility" under O.R.C. 4905.02 do not currently have. All these requirements will take unknown amounts of time and money with which to comply.

The adverse impacts to business that these regulations bring are not justified and would have an adverse impact on OCTA members, especially its small members. When considering that the legislature did not intend to create a new regime of regulation, and when in fact the intent of HB 64's new provisions was to further deregulate the industry, the Commission cannot justify the new burden created by these proposed Rules.

V. Conclusion

OCTA understands and appreciates the time and effort the Commission Staff put into the proposed COLR Rules. It also appreciates the opportunity to provide input into the Staff proposed COLR Rules. As explained in the above comments, the Commission should incorporate the revisions proposed by OCTA to ensure that the COLR Rules are consistent with the statutory authority granted to the Commission in revised O.R.C. Chapter 4927 and are not consistent with legislative intent.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served via electronic mail on October 26, 2015 to the following:

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Summary: Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telelcommunications Association