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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF CTIA-THE WIRELESS ASSOCIATION®

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The Public Utilities Commission of Ohio ("Commission") opened the above-captioned rulemaking proceeding in September 2014 to conduct the required five-year review of the retail telecommunications service standards contained in Chapter 4901:1-6 of the Ohio Administrative Code ("OAC"). During the pendency of this matter, the Ohio General Assembly adopted Amended Substitute House Bill 64 ("HB 64"), which, among other things, created R.C. 4927.10, a provision permitting incumbent local exchange companies ("ILECs") to withdraw or abandon basic local exchange telephone service ("BLES") if certain specified conditions are met. These conditions were designed to ensure reasonable customer notice and prohibit the withdrawal of BLES from customers that have no alternative provider of "reasonable and comparatively priced voice service."[1] Thus, by entry of September 23, 2015, the Commission, which is charged with adopting rules to implement this provision,[2] expanded the scope of this proceeding to consider rules proposed by the Commission staff ("Staff") to govern the BLES withdrawal/abandonment process and sought comment on the proposed rules.

[1] *See* R.C. 4927.10(B).

[2] *See* RC 4927.11(C).

Initial comments on the Staff-proposed rules were filed by AT&T Ohio ("AT&T"), Cincinnati Bell Telephone Company ("CBT"), the Ohio Telephone Association ("OTA"), the Ohio Cable Telecommunications Association ("OCTA"), and the Consumer Groups, an *ad hoc* coalition of consumer representatives consisting of the Edgemont Neighborhood Coalition, the Legal Aid Society of Southwest Ohio LLC, the Office of the Ohio Consumers' Counsel, the Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services. Although CTIA-The Wireless Association® ("CTIA")[3] did not submit initial comments, CTIA filed a letter in the docket advising the Commission that it reserved the right to file reply comments after it reviewed the initial comments submitted by the other participants. CTIA hereby submits reply comments in response to the September 23, 2015 entry.

CTIA supports the modernization of regulatory structures to better reflect the modern competitive market for telecommunication services. Indeed, aligning the Commission's rules with the realities of the modern marketplace benefits both carriers and consumers by reducing regulatory compliance costs and encouraging innovation. However, as ably argued by AT&T, CBT, OTA, and OCTA in their respective comments, there are provisions in the Staff-proposed rules that appear to impose requirements that exceed those authorized by the underlying statute and/or that conflict with other provisions of the proposed rules. As discussed *infra*, of particular concern to CTIA are certain provisions that could be construed as imposing a carrier of last resort ("COLR") obligation on successor providers to the ILEC withdrawing or abandoning BLES, as well as provisions that could result in a carrier being designated as a "willing provider," notwithstanding that the carrier did not act affirmatively to secure such status. CTIA

[3] CTIA-The Wireless Association® is an international nonprofit membership organization that has represented the wireless communications industry since 1984. CTIA's members includes wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. Additional information about CTIA is available on its website, http://www.ctia.org/about-us.

urges the Commission to clarify the Staff-proposed rules as described below to ensure that the rules are consistent with the underlying statute and continue to encourage competitive entry.

I. THE COMMISSION SHOULD MODIFY THE PROPOSED CHANGES TO RULE 4901:1-6-01, OAC, TO CLARIFY THAT ALTERNATIVE PROVIDERS ARE NOT BE SUBJECT TO COLR OBLIGATIONS.

Proposed Rule 4901:1-6-01(F) defines "(c)arrier of last resort" as "an ILEC or successor telephone company that is required to provide basic local exchange service on a reasonable and non-discriminatory basis to all persons or entities in its service area requesting that service as set forth in section 4927.11 of the Revised Code." The inclusion of the term "successor *telephone company*" (emphasis added) in this definition is problematic because the broad definition of "(a)lternative provider" under Rule 4901:1-06-01(B) could be construed to include any provider of voice telecommunications service that serves a residential customer previously served by an ILEC that withdraws BLES, including a provider that enrolls such a customer as a result of its own marketing efforts independent of the BLES withdrawal/abandonment process authorized by HB 64. This would extend to wireless providers because wireless providers are included as "telephone companies" under the Rule 4901:1-06-01(B) definition. A successor wireless provider could also be subject to COLR obligations as a "willing provider" as that term is defined in proposed Rule 4901:1-06-01(QQ).[4]

Requiring carriers to assume a COLR obligation as a condition of offering service could discourage wireless providers or resellers from serving customers affected by an ILEC's withdrawal of BLES. Carriers may be discouraged from offering service due to increased transactional and compliance costs, an outcome that is inconsistent with the state policy of

[4] A discussed in Section II of these reply comments, proposed Rule 4901:1-06-01(QQ) has its own set of problems.

encouraging market entry.[5] These COLR obligations could also have a chilling effect on geographic expansion of wireless networks.

Beyond the policy implications of the definition, the proposed rule would exceed the authority granted to the Commission by the statute in question. In this instance, the underlying statute, R.C. 4927.11(A), requires only ILECs to provide BLES, and only the withdrawal of BLES by an ILEC is subject to conditions under the statute. Further, subject to certain narrow exceptions, Rule 4901:1-6-02(B) exempts wireless providers and resellers of wireless service from the requirements of Chapter 4901:1-6, OAC. Wireless carriers do not provide BLES[6] and, in fact, the Commission is preempted by federal law from requiring them to do so.[7] Thus, the inclusion of "successor telephone company" in the Staff-proposed definition would create an unnecessary internal conflict in the rules as well as a conflict with federal law.

It is well settled under Ohio law that when the General Assembly enacts legislation authorizing a state agency to adopt rules, as is the case in this instance, those rules may not add to or subtract from the provisions of the underlying statute.[8] Thus, the Commission cannot lawfully extend the COLR obligation to alternative providers, and any attempt to do so would be *ultra vires*.

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[5] *See* R.C. 4927.02.

[6] "'Basic local exchange service' excludes any voice service to which customers are transitioned following a withdrawal of basic local exchange service under section 4927.10 of the Revised Code." R.C. 4927.01(A)(1)(b)(ix).

[7] *See* 47 U.S.C. § 332(c)(3)(A)("[No] State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service [. . .] except that this paragraph shall not prohibit a State from regulating the other terms and conditions of commercial mobile service.").

[8] *See Central Ohio Joint Voc. Sch. Dist. Bd. of Ed. v. Ohio Bur. of Employment Servs.*, 21 Ohio St.3d 5, 10, 487 N.E.2d 288, 292 (1986). Similarly, it is axiomatic that the Commission, as a creature of statute, has only those powers specifically conferred upon it by the state legislature. *See, e.g., Time Warner AxS v. Pub. Util. Comm.*, 75 Ohio St.3d 229, 234 (1996); *Canton Transfer and Storage Co. v. Pub. Util. Comm..*, 72 Ohio St.3d 1, 5 (1995); *Dayton Communications Corp. v. Pub. Util. Comm.*, 64 Ohio St.2d 302, 307 (1980); *Consumers' Counsel v. Pub. Util. Comm.*, 67 Ohio St. 2d, 153, 166 (1981).

To address this issue, the Commission should delete the phrase "or successor telephone company" from the Rule 4901:1-06-01(B) definition of "carrier of last resort." However, there is language elsewhere in the proposed rules that also purports to transfer the COLR obligation from the ILEC withdrawing BLES to the successor "willing provider" by requiring the successor provider to fulfill the same obligations as an ILEC if the provider subsequently wishes to withdraw the service.[9] Not only is there is no language in the underlying statue that imposes a COLR obligation on a carrier offering voice services that succeeds the ILEC, but such a result would be directly contrary to the objective of the statute, which is to establish an orderly process for phasing out the COLR obligation in recognition that there are now multiple alternative voice service options available to customers. Indeed, under the currently proposed language, the COLR obligation could never be extinguished because it would continue to be transferred from one successor provider to the next. As suggested above, subjecting successor providers to the COLR obligation would virtually guarantee that there will be no providers willing to offer service to a departing ILEC's customers, an outcome that is inconsistent with the state policy of encouraging market entry and contrary to the legislature's intent.[10] Accordingly, the Commission should also strike "or willing provider" from the proposed rules in each instance in which this language would subject a successor provider to obligations which, under the statute, are only applicable to ILECs.

II. THE COMMISSION SHOULD MODIFY THE PROPOSED DEFINITION OF "WILLING PROVIDER" IN RULE 4901:1-6-01(QQ), OAC, TO CLARIFY THAT AN ALTERNATIVE PROVIDER MUST ACT AFFIRMATIVELY TO BE CLASSIFIED AS A "WILLING PROVIDER."

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[9] *See* Proposed Rules 4901:1-6-07(A) and (C), and proposed Rules 4901:1-6-21(B), (E), (G), and (H).

[10] *See* R.C. 4927.02.

Proposed Rule 4901:1-6-01(QQ) defines "willing provider" as "any provider of a 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 other willing provider)."[11] The problem with this definition is that it automatically and involuntarily designates as a "willing provider" any alternative provider of voice service that offers to serve residential customers in the area served by the ILEC seeking to withdraw or abandon BLES. This outcome is in direct conflict with proposed Rule 4901:1-06-21(G), which states that "(a)n alternative provider of voice service wishing to become a willing provider pursuant to section 4927.10 of the Revised Code, must file an affidavit attesting to the same in the withdrawing incumbent local exchange carrier's or willing provider's WBL or WVS case." In other words, the choice to become a "willing provider" for purposes of the rule is, as it should be, a voluntary decision by the alternative provider, and such provider must act affirmatively to be so designated.

The definition of "willing provider" in proposed Rule 4901:1-6-01(QQ) more aptly describes the term "potential willing provider" as that term is used in Proposed Rule 4901:1-6-21(E)(4), which requires an ILEC seeking to withdraw BLES to "identify all potential willing providers offering a reasonable and comparatively priced voice service to affected customers, regardless of the technology or facilities used by the willing provider." In no event can wireless providers be compelled to provide service to customers affected by an ILEC's withdrawal of BLES, because, as previously explained, such a result would violate 47 U.S.C. § 332(c)(3)(A). For these reasons, CTIA objects to the language in the Consumer Groups' proposed version of the rules that suggests that successor providers inherit a COLR obligation from the ILEC

[11] For reasons discussed *supra*, the parentheticals "or voice service" and "or other willing provider" represents an impermissible application of COLR obligations to successor providers and should be deleted.

withdrawing BLES, or that a carrier that does not voluntarily seek "willing provider" status can be designated as a "willing provider."[12]

To solve this problem, CTIA agrees with OCTA that the Commission should eliminate the definition of "willing provider."[13] As OCTA points out, the legislature saw no need to define "willing provider" in the statute, and the common meaning of willing (*i.e.,* done, made or given by choice) is well understood.

However, if the Commission believes that a definition is necessary, the definition must conform to proposed Rule 4901:1-06-21(G), so there will be no question that a provider must act affirmatively to secure this designation. If the Commission does not eliminate the definition, CTIA proposes that proposed Rule 4901:1-6-01(QQ) be revised as follows:

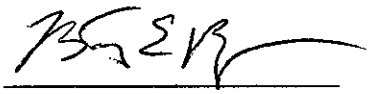
> "Willing provider" is any provider of a reasonable and comparatively priced voice service offering that service to any residential customer affected by the withdrawal or abandonment of BLES ~~(or voice service)~~ by an ILEC ~~(or other willing provider)~~ that files an affidavit in the withdrawing ILEC'S WBL case pursuant to Rule 4901:1-06-21(G) attesting that it wishes to be so designated.

III. CONCLUSION

CTIA appreciates the opportunity to provide comments on the Staff-proposed rules. CTIA urges the Commission to adopt the modifications to the proposed rules recommended herein so as to clarify that COLR obligations relate solely to ILECs and to align the rules with the legislature's intent to establish an orderly process for phasing out COLR obligations in recognition that there are now multiple alternative voice service options available to customers.

[12] CTIA takes no position with respect to the remainder of the comments of the Consumer Groups.
[13] *See* OCTA Comments, 4-5.

Respectfully submitted,



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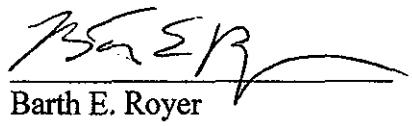
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 9th day of November 2015.



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