

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

I. Introduction

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 the Commission's rules in Ohio Administrative Code Chapter 4901:1-6¹ 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. On October 26, 2015, the Ohio Cable Telecommunications Association ("OCTA") timely filed initial comments regarding those proposed rules. The OCTA respectfully submits reply comments as follows.

There is widespread agreement that many of the proposed rules exceed the Commission's statutory authority. The Ohio Telecom Association ("OTA"), AT&T Ohio ("AT&T"), Verizon, and Cincinnati Bell Telephone Company LLC ("CBT")² all argued that multiple proposed rules should not be adopted as proposed because they exceed the statutory authority conferred to the Commission. The OCTA argued the same point on many of the proposed rules.³ The following enumerates the specific proposed rules that the OCTA, OTA, AT&T and CBT believe impose

¹ For simplicity, the proposed rules will be referred to as "Rule 6-XX" in these reply comments.

² See, e.g., OTA Comments at 3-5 and 8; AT&T Comments at 2-4, Verizon Letter at 1; and CBT Comments at 2-3.

³ See, e.g., OCTA Comments at 2-3.

withdrawal/abandonment duties on a willing provider, which are not authorized by the statutory authority granted by H.B. 64 and are contra to the intent of the General Assembly:

- proposed Rule 6-07(A) regarding withdrawal/abandonment of voice service
- proposed Rule 6-07(C) regarding withdrawal/abandonment of voice service
- proposed Rule 6-21 title
- proposed Rule 6-21(B) regarding withdrawal of voice service
- proposed Rule 6-21(C) regarding a customer petition related to the withdrawal/abandonment of voice service
- proposed Rule 6-07(C) regarding withdrawal/abandonment of voice service by a willing provider
- proposed Rule 6-21(B) regarding withdrawal of voice service by a willing provider
- proposed Rule 6-21(E) regarding withdrawal/abandonment of service by an alternative provider or a willing provider
- proposed Rule 6-21(F) regarding withdrawal/abandonment of an interconnected voice over internet protocol-enabled service by a willing provider
- proposed Rule 6-21(G) regarding withdrawal/abandonment of service by a willing provider

Further, the OCTA, OTA, AT&T and CBT noted that proposed Rules 6-21(H) and (I) improperly require special/additional registration, reports and assessments by willing providers, beyond the statutory authority in H.B. 64.⁴ Several other commenters and the OCTA pointed out that the definition of “willing provider” in proposed Rule 6-01(QQ) did not include the concept of “willingness.”⁵ The OCTA and AT&T both argue that the Commission staff erred by defining “willing provider” – the proposed rule turns a simple phrase used by the drafters into a term of art that was not intend to be such.⁶ The elimination of this definition and simply giving the phrase its intended plain, ordinary meaning would resolve many of the proposed rules’ shortcomings. Similarly, AT&T posited (like the OCTA) that it is premature and impractical to

⁴ OCTA Comments at 11; OTA Comments at 15-16; AT&T Comments at 25-26.

⁵ OTA Comments at 6-7; Consumer Groups’ Comments at 23; OCTA Comments at 5.

⁶ OCTA Comments at 6; AT&T Comments at 7.

include potential willing providers in the notice to customers regarding the ILEC's withdrawal/abandonment of BLES.⁷

As can be seen, there are already a number of areas of common ground between the OCTA and others. The OCTA does not, however, agree with all comments filed and hereby files these reply comments to respond to other comments filed on October 26, 2015. In these reply comments, the OCTA will directly respond to:

- (1) The inclusion of a Commission application and 120-day approval process in Rules 6-07(C) and 6-21(B) and (D) for a withdrawal/abandonment by a willing provider, and the ability for the public to raise specific challenges to such applications. The new statutory withdrawal/abandonment process is not applicable to willing providers and does not justify a Commission application and approval process for willing providers or specific allowances for public challenges to any withdrawal of voice services by a willing provider.
- (2) The inclusion in Rule 6-21(A) of a list of affected customers in the ILEC filing. The OCTA is not opposed to this suggested addition. In the event the Commission does not accept this addition, the OCTA recommends that, at a minimum, all telephone exchange(s) to be withdrawn/abandoned be specifically named within the ILEC notice and on any included map(s).
- (3) The proposal to expressly identify within Rule 6-21(E) the Commission's investigation of whether there are any reasonable and comparatively priced voice services. The OCTA agrees that the Commission investigation needs to be included in the rules. Based on Chapter 4927 and the revisions implemented in H.B. 64, the Commission investigation and conclusions regarding any reasonable and comparatively priced voice services must be based on only publicly available information.
- (4) The proposal in Rule 6-21(H) that willing providers register with the Commission no later than the ILEC's filing. The OCTA opposed the registration process in its earlier comments and continues to believe that a willing provider registration is beyond the Commission's statutory authority. Moreover, the OCTA finds this specific deadline suggestion not only contrary to the statutory authority but impractical – a willing provider will not necessarily know of an ILEC's upcoming filing.
- (5) Mandating in Rule 6-37(A) that willing providers provide annual assessment reports. The OCTA supports AT&T's argument⁸ that the proposed rule exceeds the statutory authority of the Commission.

⁷ AT&T Comments at 16-18; OCTA Comments at 8.

⁸ AT&T Initial Comments at 27-28.

The OCTA's election to not comment on a particular proposed rule or suggested revision does not necessarily reflect its endorsement of any of the proposed rules or revisions.

II. Commission Imposing a Withdrawal/Abandonment "Application" and 120-Day Approval Process on Willing Providers, and Allowance for Public Challenges to the Applications

Proposed Rules 6-07(C), 6-21(B) and 6-21(D)

In proposed Rules 6-07(C) and 6-21(B) and (D), the Staff proposes that a willing provider be required to file an application with the Commission to withdraw/abandon voice service. In addition, in proposed Rule 6-21(B), the application would be subject to a Commission automatic approval process. Proposed Rule 6-21(D) provides that the application will be automatically approved on the 121st day after the application is filed if (a) no affected residential customer filed a petition with the Commission and (b) the collaborative process identifies no residential customers.

These proposed rules will subject willing providers to the ILEC's responsibilities because they essentially treat a willing provider who elects to serve customer(s) affected by the ILEC's withdrawal/abandonment of BLES as if that willing provider has assumed the ILEC's traditional regulatory responsibilities as a COLR. However, H.B. 64 does not provide authority to regulate willing providers in that manner. More specifically, willing providers are not subject to the 120-day notice requires in O.R.C. §4927.10. Rather, under O.R.C. §4927.10, a provider of telecommunications services can volunteer to be a willing provider for those customers who will have no reasonable and comparatively priced voice service upon the ILEC's withdrawal/abandonment. The willing provider does not become the ILEC. AT&T and the

OTA similarly pointed out that these three proposed rules are not in compliance with the statutory authority,⁹ and work against the deregulatory intent of the legislation.

The Consumer Groups¹⁰ have proposed to allow for challenges to the withdrawal/abandonment “application,”¹¹ and proposed the following language to include in Rule 6-21:

Interested persons may file a challenge to any portion of the application within 30 days after the application is filed. The challenge must be filed in the docket of the application, must be in writing, and must detail the nature of the challenge and the reasons for the challenge.

The Consumer Groups’ proposed language would appear to allow for challenges of all Rule 21 applications. Nothing in H.B. 64 envisions an application process, much less challenges, and this proposal is contrary to the notice process set forth in the legislation. For these reasons, the OCTA urges the Commission (1) to reword proposed Rule 6-07(C) to remove the references to voice service and willing provider, (2) to reject proposed Rules 6-21(B) and (D), and (3) to reject the Consumer Group’s proposed additional language for Rule 6-21.

III. List of Affected Customers in the ILEC Filing or, alternatively, Specific Listing of Telephone Exchanges Named in the ILEC Notice

Proposed Rule 6-21(A)

The Consumer Groups suggested that the ILEC filing include a list of the affected customers (name, address and telephone number filed under seal) and that the collaborative members be able to have access to that information.¹² The OCTA is not opposed to including the affected customer information in the ILEC’s filing. If, later, there is a need to find a willing

⁹ AT&T Comments at 13, 21-22; OTA Comments at 13-14.

¹⁰ The Consumer Groups who jointly filed comments on October 26, 2015, in this proceeding are: Edgemont Neighborhood Coalition, Legal Aid Society of South West Ohio LLC, The Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors Inc. and Southeastern Ohio Legal Services.

¹¹ Consumer Groups’ Comments at 15-16.

¹² Consumer Groups’ Comments at 24.

provider, then having the affected residential customer's name and address in the ILEC filing will provide needed information to entities who are evaluating whether to offer their services to that customer, especially given the fixed time period involved prior to the BLES withdrawal/abandonment taking place.

In the event, however, the Commission does not accept this addition to Rule 6-21(A), then the Commission should ensure that the ILEC's notice filing clearly designates, at a minimum, the telephone exchange(s) involved in its withdrawal/abandonment. While proposed Rule 6-21(A)(5) states that the ILEC filing must describe the geographic boundary of the withdrawal area, this can be made clearer in the rule by requiring that, at a minimum, the involved telephone exchange(s) be named within the notice and on any included map(s).

IV. Commission's Investigation of Whether There are any Reasonable and Comparatively Priced Voice Services

Proposed Rule 6-21(E)

The majority of comments indicate that the Commission's responsibility to conduct an investigation was omitted from the proposed rules. Both the OTA and AT&T noted that nothing in the proposed rules overtly states that the Commission will investigate whether there are any reasonable and comparatively priced voice services available to affected customers from alternative providers.¹³ The Consumer Groups likewise advocate for a specific provision expressly obligating the Commission to investigate whether there are any reasonable and comparatively priced voice services available to affected customers.¹⁴ The OCTA is also concerned about this omission in the rules and the need to identify what is to be included in the investigation.

¹³ OTA Comments at 14; AT&T Comments at 22.

¹⁴ Consumer Groups' Comments at 14-15.

It is important to note that H.B. 64 made limited amendments to Chapter 4927 beyond the addition of O.R.C. §§4927.10 and 4927.101. It clearly did not and was not intended to revise Chapter 4927 to impose regulatory obligations on voice service. As is clear in Chapter 4927, the only rate-regulated telecommunications service is BLES. As a result, any rules adopted regarding the investigation to be conducted by the Commission related to reasonable and comparatively priced alternative providers of voice service should expressly provide that the Commission will conduct its investigation and base its conclusions regarding any reasonable and comparatively priced voice services on only publicly available information. This will ensure that a fair analysis takes place within the Commission's statutory authority.

V. Willing Providers to Register with the Commission no Later than the ILEC's Filing

Proposed Rule 6-21(H)

The Consumer Groups advocate that willing providers be required to register on or before the date of the ILEC's filing.¹⁵ In its earlier comments, the OCTA recommended that proposed Rule 6-21(H) be rejected as it is outside the scope of the Commission's statutory authority, among other reasons.¹⁶ The OCTA still believes that position is correct.

To require willing providers to register before the ILEC filing takes place is not a reasonable policy or procedure for two basic reasons – statutory and practical. Nothing in H.B. 64 would allow excluding providers that are willing to offer service where no alternative providers exist merely because those providers had not announced themselves prior to the ILEC making its filing with the Commission. To insert such a requirement is contrary to the statutory authority. On the practical side, providers that may be willing to offer service will not necessarily know of an upcoming ILEC filing or whether alternative providers exist in the

¹⁵ Consumer Groups' Comments at 24.

¹⁶ OCTA Comments at 11-12.

exchange(s) and should not be expected to monitor the ILECs' activities in this manner. Moreover, the effect of this suggestion is to possibly eliminate providers who had not stepped forward prior to the ILEC filing that might otherwise be willing to offer the effected customer(s) service. Accordingly, the Consumer Groups' suggested clarification should be rejected.

VI. Willing Providers Provide Annual Assessment Reports

Proposed Rule 37(A)

AT&T pointed out that the proposed changes to Rule 37(A) will impose additional duties on willing providers that are not permitted by H.B. 64, or otherwise set forth in the prior statutory authority of the Commission.¹⁷ The willing providers would be required to submit annual assessment reports. The OCTA agrees. This change is outside the scope of the enabling statute and the proposal should be rejected.

VII. Conclusion

The OCTA stands by its October 26 comments filed in this proceeding and urges the Commission to accept the changes recommended therein. In addition, the OCTA urges the Commission to:

- Alter proposed Rules 6-07(C) to remove the references to voice service and willing provider, reject proposed Rule 6-21(B), and reject proposed Rule 6-21(D) to eliminate the application for withdrawal/abandonment and related automatic approval process by willing providers. Also, reject the Consumer Group's proposed additional language for Rule 6-21 allowing application challenges.
- If the Commission rejects the Consumer Groups' proposal to require listing of affected customer names and addresses as part of the ILEC filing, the Commission should adopt a rule requiring the ILEC notice of abandonment and included map(s) to specifically include all telephone exchange(s) from which BLES is to be withdrawn/abandoned.
- Alter proposed Rule 6-21(E) to expressly specify that any Commission investigation of whether there are any reasonable and comparatively

¹⁷ AT&T Comments at 27-28.

priced voice services will rely only on publicly available information for that investigation.

- Reject the suggestion for proposed Rule 6-21(H) that willing providers must register with the Commission no later than the ILEC's filing.
- Reject the proposal in proposed Rule 6-37(A) to require willing providers to submit annual assessment reports.

The OCTA urges the Commission to accept the changes for the reasons recommended herein and in its October 26, 2015 filing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Gretchen Petrucci', with a horizontal line drawn underneath it.

Gretchen Petrucci (0046608)

Benita Kahn (0018363)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

614-464-5407

glpetrucci@vorys.com

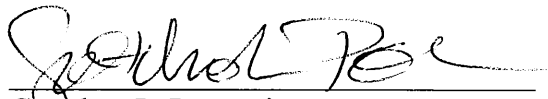
bakahn@vorys.com

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 November 9, 2015, to the following:

Matthew Myers Unite Private Networks 120 S. Stewart Rd. Liberty, MO 64068 matthew.myers@upnfiber.com	Patrick M. Crotty Cincinnati Bell Telephone Co. LLC 221 East Fourth Street, Suite 1090 Cincinnati, Ohio 45202 patrick.crotty@cinbell.com
Ellis Jacobs Advocates for Basic Legal Equality, Inc. 130 West Second St., Suite 700 East Dayton, Ohio 45402 ejacobs@ablelaw.org	Noel M. Morgan Legal Aid Society of Southwest Ohio LLC 215 E. Ninth St. Cincinnati, Ohio 45202 Telephone: 513-362-2837 nmorgan@lascinti.org
BRUCE J. WESTON OHIO CONSUMERS' COUNSEL Terry L. Etter, Counsel of Record Assistant Consumers' Counsel Office of the Ohio Consumers' Counsel 10 West Broad Street, Suite 1800 Columbus, Ohio 43215-3485 terry.etter@occ.ohio.gov	Michael R. Smalz Ohio Poverty Law Center 555 Buttles Avenue Columbus, Ohio 43215 mshalz@ohiopovertylaw.org
Peggy P. Lee Southeastern Ohio Legal Services 964 East State Street Athens, Ohio 45701 plee@oslsa.org	Scott E. Elisar McNees Wallace & Nurick LLC 21 E. State Street, 17th Floor Columbus, Ohio 43215 selisar@mwncmh.com
Douglas W. Trabaris Mark R. Ortlieb AT&T Ohio 225 West Randolph Street, Floor 25D Chicago, IL 60606 dt1329@att.com mo2753@att.com	Michael Walters Pro Seniors, Inc. 7162 Reading Road, Suite 1150 Cincinnati, Ohio 45237 mwalters@proseniors.org

Christen M. Blend Porter, Wright Morris & Arthur, LLP 41 South High Street, 29 th Floor Columbus, Ohio 43215 cblend@porterwright.com	William Haas T-Mobile 2001 Butterfield Road Downers Grove, IL 60515 william.haas@t-mobile.com
Barth E. Royer Barth E. Royer LLC 2740 East Main Street Bexley, Ohio 43209 barth.royer@aol.com	David Vehslage Verizon 3939 Blue Spruce Drive Dewitt, MI 48820 david.vehslage@verizon.com
Glenn S. Richards Voice on the Net Coalition 1200 Seventeenth Street, NW Washington, DC 20036 glenn.richards@pillsburylaw.com	


Gretchen L. Petrucci

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

11/9/2015 5:09:26 PM

in

Case No(s). 14-1554-TP-ORD

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