

**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.)	

**APPLICATION FOR REHEARING OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

The Ohio Cable Telecommunications Association (“OCTA”) files this Application for Rehearing pursuant to Ohio Revised Code Section 4903.10 regarding two rule provisions adopted in the November 30, 2016 decision of the Public Utilities Commission of Ohio (“Commission”) in this proceeding. The OCTA agrees with many of the Commission’s conclusions and adopted rule revisions for the new process associated with withdrawal or abandonment of basic local exchange service by incumbent local exchange carriers. The Commission has adopted rules that largely correspond with the new statutory requirements.

With regard to two rule provisions addressing providers of voice service (as distinguished from basic local exchange service), however, the Commission’s decision is unjust and unlawful in the following respects:

1. The Commission exceeded its authority in adopting Rules 4901:1-6-21(F) and (G).
2. The Commission erred in adopting Rule 4901:1-6-21(G) because it is vague and ambiguous as to when the Commission will subject a voice service provider to all the provisions of Rule 4901:1-6-21.

The facts and arguments supporting this application for rehearing are set forth in the attached memorandum in support.

Respectfully submitted,

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**MEMORANDUM IN SUPPORT OF THE
APPLICATION FOR REHEARING OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

I. Introduction

Statutory changes enacted in 2015¹ have provided the Public Utilities Commission of Ohio (“Commission”) with new authority to oversee the withdrawal or abandonment of basic local exchange service (“BLES”) by an incumbent local exchange carrier (“ILEC”). *See*, R.C. 4927.07 and 4927.10. In this docket, the Commission evaluated the existing rules in Ohio Administrative Code Chapter 4901:1-6 and began the process of establishing new administrative rules specifically related to the BLES withdrawal/abandonment process. The Ohio Cable Telecommunications Association (“OCTA”) agrees with many of the Commission’s findings on the new proposed rules, but proposed Rules 4901:1-6-21(F) and (G)² exceed its statutory authority to regulate voice service because those rules would subject providers of voice service (which is statutorily distinguished from BLES) to filing requirements, Commission review and the entire BLES withdrawal/abandonment process. In addition, Rule 4901:1-6-21(G) is vague, ambiguous and lacking in the necessary triggering standards.

Both proposed Rules 4901:1-6-21(F) and (G) should be removed, as detailed and explained below.

¹ The statutory revisions were enacted in September 2015 following the 131st General Assembly’s adoption of Amended Substitute House Bill 64.

² The Commission adopted Rules 4901:1-6-21(F) and (G), but still must propose them to the Joint Committee on Agency Rule Review before they can become final rules, per R.C. 119.03 and 119.04.

II. Argument

A. The Commission exceeded its statutory authority in adopting Rules 4901:1-6-21(F) and (G).

The Commission, as a state agency, can exercise only that authority which has been specifically delegated to it by the Ohio General Assembly.³ Thus, the Commission's rules must correspond with and not exceed the applicable statutory authorization. Proposed Rules 4901:1-6-21(F) and (G) do not comply.

1. R.C. 4927.03(A) does not authorize proposed Rules 4901:1-6-21(F) and (G).

Proposed Rules 4901:1-6-21(F) and (G) specifically reference R.C. 4927.03(A) as a basis for those regulations. R.C. 4927.03(A), however, states that the Commission has no authority over voice over internet protocol-enabled services ("VoIP") or any other "new" telecommunications service⁴ unless the Commission specifically finds that "the exercise of the commission's authority is necessary for the protection, welfare, and safety of the public."⁵

Proposed provision (F) imposes regulations on providers of voice service that are not necessary for the protection, welfare, and safety of the intended target customers – the at-risk residential customers. Proposed provision (F) requires a sole provider of voice service to submit

³ *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, citing *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 152, 21 O.O.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051.

⁴ In this context, the telecommunications service is one that was not commercially available on September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010. R.C. 4927.03(A).

⁵ There are limited, enumerated exceptions where the Commission has authority, but none of those exceptions are involved here.

a withdrawal/abandonment filing for Commission review.⁶ Proposed provision (F) states:

If the sole provider of voice service seeks to withdraw or abandon such voice service, it shall notify the Commission at least thirty days prior to the withdrawal or abandonment through the filing of a withdrawal of voice service (WVS) consistent with the authority granted to the commission in division (A) of section 4927.03 of the Revised Code.

R.C. 4927.03(A) is a deregulation statute; it does not provide the statutory authority for the Commission to impose filing requirements so that the Commission can review (and presumably rule on) a withdrawal/abandonment of voice service. Proposed provision (F), however, would impose such regulatory constraints on a sole provider of voice service, including a provider who would not otherwise qualify as a telephone company or a public utility under Ohio law. This is because proposed provision (F) applies to *any* provider of voice service if it is the sole voice service provider. Proposed provision (F) is not specific to providers currently subject to Commission regulation and it is not specific to a voice service technology that is currently subject to Commission regulation. As a result, under the plain language of proposed provision (F), a sole provider who uses a technology that excludes it from the definition of a telephone company or a public utility under Ohio law would become subject to Commission regulation.

The Commission reasoned that, without provision (F), at-risk residential subscribers who do not have access to voice services may be harmed.⁷ The Commission assumed that if the sole provider of voice service were to withdraw or abandon voice service, those customers will be unable to access 9-1-1, emergency services, and/or transmit information related to medical

⁶ It is unclear how “sole provider” will be determined.

⁷ Finding and Order at ¶¶ 205 and 206.

devices.⁸ However, that assumption may not be reasonable because the ILEC may still be providing BLES – an ILEC withdrawal/abandonment is not a condition precedent to proposed provision (F). The sole provider of voice service may not be serving residential customers as well. The Commission has statutory authority in R.C. 4927.15 to establish rates, terms and conditions for 9-1-1 service of a telephone company or a telecommunications carrier. The plain language of that statute likewise does not authorize the Commission to extend regulatory authority for 9-1-1 service and apply to *any* provider of voice service (including VoIP) as done in proposed provision (F). For all of these reasons, provision (F) exceeds the statutory authority.

Proposed provision (G) likewise exceeds the Commission’s authority. Provision (G) would enable the Commission to subject any voice service provider to the entire BLES withdrawal/abandonment process⁹ under two scenarios:

- (1) When a residential customer will not have access to 9-1-1 if its current provider of voice service withdraws/abandons its voice service; or
- (2) When a voice service provider is the sole provider of emergency services.¹⁰

The General Assembly did not apply the BLES withdrawal/abandonment process to voice service providers. Specifically, nothing in R.C. 4927.03(A) would permit the Commission to apply that process to voice service providers and R.C. 4927.10 states that the withdrawal/abandonment process is limited to ILECs only. The authority in R.C. 4927.15 for 9-

⁸ Finding and Order at ¶ 206.

⁹ The withdrawal/abandonment process includes public notice, residential customer petitions, Commission investigation, and possible provision of a reasonable and comparatively priced voice service. R.C. 4927.10

¹⁰ Provision (G) states: “If the Commission determines that: (1) a residential customer of voice service will not have access to 9-1-1 service if the customer's current provider withdraws or abandons its voice service; or (2) the current provider of voice service is the sole provider of emergency services to residential customers, pursuant to the authority granted to the commission in division (A) of section 4927.03 of the Revised Code, that provider may be subject to all the provisions of this rule, on a case-by-case basis.” Again, it is unclear how the Commission will determine “sole provider.”

1-1 service also does not provide authority to extend the BLES withdrawal/abandonment process to any voice service providers. The Commission clearly intends, however, to apply that statutory BLES withdrawal/abandonment process to voice service via provision (G) as the Commission sees fit. The passage of R.C. 4927.10 also is not a sufficient basis for the Commission to find a “need” under R.C. 4927.03(A) to impose authority over voice service providers that are not subject to Commission authority. Nor did the Commission actually find, as required by R.C. 4927.03(A), that it is “necessary” to apply the BLES withdrawal/abandonment process under the two circumstances.

Additionally, the Commission has ignored that the ILEC may still be providing BLES in the service area, in which case the withdrawal/abandonment process is not necessary. As a result, the Commission has exceeded its statutory authority in R.C. 4927.03(A). Both proposed provisions (F) and (G) should be deleted from Rule 4901:1-6-21.

2. R.C. 4927.10 is not a statutory basis for proposed Rules 4901:1-6-21(F) and (G).

Rule 4901:1-6-21 is entitled “Carrier’s withdrawal or abandonment of basic local exchange service (BLES) or voice service” and is clearly based on R.C. 4927.10, which created a new process for withdrawal or abandonment of BLES by ILECs. The process allows an ILEC to withdraw BLES if the Federal Communications Commission has allowed the ILEC to withdraw the interstate-access component of its BLES. If, as a result of that BLES withdrawal/abandonment, a residential customer will not be able to obtain “reasonable and comparatively priced voice service” and no willing provider of “reasonable and comparatively priced voice service” steps in, the Commission may require the ILEC to provide “reasonable and comparatively priced voice service.” BLES is not the same service as voice service.¹¹

¹¹ R.C. 4927.01(A)(18) and R.C. 4927.10(B)(3).

Numerous provisions in Rule 4901:1-6-21 are based on R.C. 4927.10. That statute, however, does not address a withdrawal/abandonment of voice service by a provider. Indeed, R.C. 4927.07 authorizes even a telephone company to withdraw or abandon any retail telecommunications service, including any non-BLES voice service, upon simply providing notice. As a result, R.C. 4927.10, which does not authorize the Commission to impose *any* obligations upon a provider of voice service, cannot establish a statutory basis for proposed Rules 4901:1-6-21(F) and (G).

B. The Commission erred in adopting Rule 4901:1-6-21(G) because it is vague and ambiguous as to when the Commission will subject a voice service provider to all the provisions of Rule 4901:1-6-21.

In addition to being beyond the Commission's statutory authority, Rule 4901:1-6-21(G) is vague and ambiguous as to when the Commission will subject a voice service provider to the BLES withdrawal/abandonment process. Under proposed Rule 4901:1-6-21(G), the Commission would apply that process to voice service providers on an arbitrary, case-by-case basis. The rule does not identify when or how the Commission will decide to apply the BLES withdrawal/abandonment rule. It does not identify how the Commission determinations will be made. Also, it does not identify if some or all of the BLES withdrawal/abandonment process will apply. Proposed provision (G) is a vague and ambiguous regulation¹² and as such, should be removed from Rule 4901:1-6-21.

III. Conclusion

Rehearing should be granted so that the Commission's proposed Rule 4901:1-6-21 will be fully compliant with the Commission's statutory authority, and be just and reasonable. There

¹²*See, generally, In re Columbus S. Power Co.*, 134 Ohio St.3d 392 at ¶ 20 (2012) ("The void-for-vagueness doctrine is a component of the right to due process and is rooted in concerns that laws provide fair notice and prevent arbitrary enforcement").

is no support for the Commission's determination to expose voice service providers to the multiple regulatory requirements of proposed provisions (F) and (G). Both provisions go well beyond protection, welfare and safety, which are the limited bases upon which the Commission can exercise authority under R.C. 4927.03. Also, newly enacted R.C. 4927.10 does not authorize a withdrawal/abandonment process for voice service, and imposing such a process would be inconsistent with R.C. 4927.07 and 4927.15. The OCTA urges the Commission to remove proposed provisions (F) and (G) from Rule 4901:1-6-21.

Respectfully submitted,

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

Summary: Application for Rehearing electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association