

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF CHAPTER 4901:1-6 OF THE
OHIO ADMINISTRATIVE CODE,
REGARDING TELEPHONE COMPANY
PROCEDURES AND STANDARDS.

CASE No. 14-1554-TP-ORD

SUPPLEMENTAL FINDING AND ORDER

Entered in the Journal on July 11, 2018

I. SUMMARY

{¶ 1} The Commission adopts proposed rule Ohio Adm.Code 4901:1-6-36 concerning telecommunications relay service.

II. DISCUSSION

A. *Procedural Background*

{¶ 2} R.C. 111.15(B) requires all state agencies to conduct a review, every five years, of their rules to determine whether to continue without change, amend, or rescind their rules.

{¶ 3} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the text or other material incorporated by reference is

deposited or displayed as required by R.C. 121.74, and whether the incorporation by reference meets the standards stated in R.C. 121.71, 121.75, and 121.76;

- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determine under R.C. 107.52; and
- (g) Contain words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive.

{¶ 4} In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled “Establishing the Common Sense Initiative,” which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must: review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and, amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, needlessly burdensome, unnecessarily impede business growth or that have had negative, unintended consequences.

{¶ 5} On September 4, 2014, the Commission opened Case No. 14-1554-TP-ORD (*Retail Rules Case*), *In re the Commission’s Review of Chapter 4901:1-6 of the Ohio Administrative Code, Regarding Telephone Company Procedures and Standards*, for the purpose of commencing the five-year review of the rules contained in Ohio Adm.Code Chapter 4901:1-6.

{¶ 6} Pursuant to its November 30, 2016 Finding and Order (Finding and Order) in the *Retail Rules Case*, the Commission adopted administrative rules regarding telephone company procedures and standards. Consistent with the Finding and Order, some rules were identified as no change rules, some were identified as amended rules, and one was identified as a new rule.

{¶ 7} On December 30, 2016, AT&T Ohio; Ohio Cable Telecommunications Association (OCTA); the Ohio Telecom Association (OTA); and Edgemont Neighborhood Coalition (Edgemont), Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel (OCC), Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (jointly, Consumer Groups) filed applications for rehearing of the Finding and Order.

{¶ 8} On January 9, 2017, AT&T Ohio, OCTA, OTA, and Consumer Groups each filed a memorandum contra the applications for rehearing.

{¶ 9} On January 25, 2017, the Commission issued its Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

{¶ 10} On April 5, 2017, the Commission issued its Second Entry on Rehearing granting some and denying some of the assignments of error set forth in the applications for rehearing.

{¶ 11} On May 5, 2017, OCTA and Consumer Groups¹ filed applications for rehearing of the Commission's April 5, 2017 Second Entry on Rehearing.

{¶ 12} On May 15, 2017, AT&T Ohio and OCTA filed memorandum contra Consumer Groups' application for rehearing.

{¶ 13} On May 15, 2017, Consumer Groups filed a memorandum contra OCTA's application for rehearing.

¹ The entities include Communities United for Action, Edgemont, OCC, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services.

{¶ 14} On May 24, 2017, the Commission issued its Third Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

{¶ 15} On August 9, 2017, the Commission issued its Fourth Entry on Rehearing which, among other things, granted in part and denied in part OCTA's application for rehearing.

{¶ 16} On September 8, 2017, Consumer Groups² filed an application for rehearing of the Commission's August 9, 2017 Fourth Entry on Rehearing.

{¶ 17} On September 18, 2017, AT&T Ohio and OTA each filed a memorandum contra Consumer Groups' application for rehearing.

{¶ 18} On October 4, 2017, the Commission issued its Fifth Entry on Rehearing denying Consumer Groups' application for rehearing.

{¶ 19} Pursuant to its Entry of May 2, 2018, the Commission requested comment on additional revisions to Ohio Adm.Code 4901:1-6-36(B) and (C) regarding telecommunications relay service (TRS). Specifically, the Commission sought comment on modifying the language as follows:

(B) For the purpose of funding the TRS, the commission shall collect an assessment to pay for the costs incurred by the TRS provider for providing the service in Ohio, from each service provider that is required under federal law to provide its customers access to TRS, including telephone companies, wireless service providers, resellers of wireless service, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to voice-grade, end user access lines, and other telecommunications

² The entities include Appalachian Peace and Justice Network, Communities United for Action, Edgemont, OCC, and Pro Seniors, Inc.

services that are competitive with or functionally equivalent to voice-grade, end user access lines in the event such provider is subsequently required under federal law to provide its customers access to ~~telecommunications-relay service~~ TRS. For purposes of this rule, advanced services and internet protocol-enabled services have the meanings ascribed to them by federal law, including federal regulations.

(C) Each service provider ~~identified~~ identified in paragraph (B) of this rule shall be assessed by the commission according to a schedule established by the commission by taking the TRS appropriation and applying a credit which reflects over collected or under collected monies from the previous year to obtain the total amount to be assessed which is then divided by the total number of lines reported on the TRS reports for that year resulting in a rate per line. The rate per line is then multiplied by the number of lines per service provider, as reported on the annual TRS reports, which results in a billed amount per company. In accordance with division (C) of section 4905.84 of the Revised Code, the billed amount will necessarily vary by year as the appropriation amount, number of service providers, and number of lines in service change per year.

B. *Consideration of Comments*

{¶ 20} With respect to the proposed modifications in Subsection (C), OCTA states that the proposed assessment calculation process appears to comply with the statutory requirement that the assessment be established on a competitively neutral basis.

{¶ 21} In light of the changes proposed in Subsection (C), OCTA believes that the first sentence of Subsection (D) appears unnecessary or misplaced. Specifically, OCTA points out that Subsection (C) already provides the formula for calculating the assessment. Therefore, OCTA recommends that the Commission either delete the first sentence of proposed Subsection (D) or move it to the revised Subsection (C).

{¶ 22} Upon a review of OCTA's recommendation, the Commission finds that the first sentence of proposed Subsection (D) is unnecessary and, therefore, shall be removed. With the one aforementioned modification, the proposed revisions to Ohio Adm.Code 4901:1-6-36 shall be adopted.

C. Conclusion

{¶ 23} Upon consideration of the record as a whole, including the submitted comments, the Commission enacts the proposed Ohio Adm.Code 4901:1-6-36, as amended by this Supplemental Finding and Order. The adopted rule is attached.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That Ohio Adm.Code 4901:1-6-36 be amended consistent with this Supplemental Finding and Order. It is, further,

{¶ 26} ORDERED, That the adopted rule be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

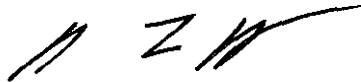
{¶ 27} ORDERED, That the final rule be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for the Ohio Adm.Code 4901:1-6-36 shall be in compliance with R.C. 106.03. It is, further,

{¶ 28} ORDERED, That to the extent not addressed in this Supplemental Finding and Order, all other arguments are denied. It is, further,


{¶ 29} ORDERED, That a notice of this Supplemental Finding and Order be sent to the telephone industry list-serve. It is, further,

{¶ 30} ORDERED, That a copy of this Supplemental Finding and Order be served upon all regulated telephone companies and all radio common carriers, the Office of the Ohio Consumers' Counsel, the Ohio Telecom Association, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

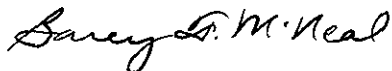


Asim Z. Haque, Chairman


M. Beth Trombold
Thomas W. Johnson
Lawrence K. Friedeman
Daniel R. Conway

JSA/mef/sc

Entered in the Journal

JUL 1 1 2018Barcy F. McNeal
Secretary

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AMENDED

4901:1-6-36 Telecommunication relay services assessment procedures.

- (A) This rule is limited to the commission's administration and enforcement of the assessment for the intrastate telecommunications relay service (TRS) in accordance with section 4905.84 of the Revised Code.
- (B) For the purpose of funding the TRS, the commission shall collect an assessment to pay for the costs incurred by the TRS provider for providing the service in Ohio, from each service provider that is required under federal law to provide its customers access to TRS, including telephone companies, wireless service providers, resellers of wireless service, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to voice-grade, end user access lines, and other telecommunications services that are competitive with or functionally equivalent to voice-grade, end user access lines in the event such provider is subsequently required under federal law to provide its customers access to ~~telecommunications relay service~~ TRS. For purposes of this rule, advanced services and internet protocol-enabled services have the meanings ascribed to them by federal law, including federal regulations.
- (C) Each service provider ~~identified~~ identified in paragraph (B) of this rule shall be assessed by the commission according to a schedule established by the commission by taking the TRS appropriation and applying a credit which reflects over collected or under collected monies from the previous year to obtain the total amount to be assessed which is then divided by the total number of lines reported on the TRS reports for that year resulting in a rate per line. The rate per line is then multiplied by the number of lines per service provider, as reported on the annual TRS reports, which results in a billed amount per company. In accordance with division (C) of section 4905.84 of the Revised Code, the billed amount will necessarily vary by year as the appropriation amount, number of service providers, and number of lines in service change per year.
- (D) ~~The commission staff shall allocate the assessment proportionately among the appropriate service providers using a competitively neutral formula. To determine the assessment amount owed by each provider the commission staff shall use the number of voice-grade, end user access lines, or their equivalent, as reflected in each provider's most recent federal~~

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communications commission form 477, where applicable. All providers shall submit to the commission staff, on a semi-annual basis, a completed form, as prescribed by the commission staff, which contains the number of the provider's retail customer access lines or their equivalent.

- (E) Sixty days prior to the date each service provider is required to make its assessment payment in accordance with paragraph (C) of this rule, the commission staff shall notify each service provider of its proportionate share of the costs to compensate the TRS provider.
- (F) The commission staff shall annually reconcile the funds collected with the actual costs of providing TRS when it issues the assessment in accordance with paragraph (E) of this rule and shall either proportionately charge the service providers for any amounts not sufficient to cover the actual costs or proportionately credit amounts collected in excess of the actual costs.
- (G) In accordance with division (C) of section 4905.84 of the Revised Code, each service provider that pays the assessment shall be permitted to recover the cost of the assessment. The method of the recovery may include, but is not limited to, a customer billing surcharge. Any telephone company, other than a wireless service provider, that proposes a customer billing surcharge or a change in the surcharge shall file a zero-day notice filing (ZTA) with the commission, in accordance with rule 4901:1-6-04 of the Administrative Code. The ZTA will take effect on the same day the filing is made in accordance with paragraph (B) of rule 4901:1-6-05 of the Administrative Code. Each regulated provider imposing a surcharge on its customers must provide notice to its customers a minimum of fifteen days prior to the effective date of the surcharge in accordance with rule 4901:1-6-07 of the Administrative Code.
- (H) In accordance with division (D) of section 4905.84 of the Revised Code, the commission shall take such measures as it considers necessary to protect the confidentiality of information provided pursuant to paragraph (D) of this rule.
- (I) The commission may direct the attorney general to bring an action for immediate injunction or other appropriate relief to enforce commission orders and to secure immediate compliance with this rule.