

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Implementation of Substitute House)	Case No. 19-173-TP-ORD
Bill 402 of the 132nd Ohio General)	
Assembly)	

REPLY COMMENTS OF OHIO TELECOM ASSOCIATION

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I. INTRODUCTION

Substitute House Bill 402 ("HB 402") includes changes to Ohio telecommunications laws that include, among other things, pricing flexibility for basic local exchange service and a reduction in the regulatory requirements for changes in control of telephone companies. In an Entry on March 20, 2019, the Commission published draft rules. Entry at 1 (Mar. 20, 2019). On April 10, 2019, Ohio Telecom Association,¹ the Ohio Cable Telecommunications Association,² and a group including the Office of the Ohio Consumers' Counsel filed comments.³ Although there are several areas of agreement among the commenters, OTA recommends that the Commission reject four proposals advanced in the other comments.

¹ Initial Comments of Ohio Telecom Association (Apr. 10, 2019) ("OTA Comments").

² Initial Comments of the Ohio Telecommunications Association (Apr. 10, 2019) ("OCTA Comments").

³ Comments on Proposed Rules Affecting Ohioans' Basic Telephone Service by the Greater Edgemont Community Coalition, the Legal Aid Society of Cleveland, Legal Aid Society of Southwest Ohio LLC, the Office of the Ohio Consumers' Counsel, Ohio Association of Community Action Agencies, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (Apr. 10, 2019) ("Consumer Group Comments").

A. The Commission Should Reject the Consumer Group's Recommendation to Delay Adoption of Rule 4901:1-6-21(G)

In its Comments, the Consumer Group recommends that the Commission delay implementation of Rule 4901:1-6-21(G) because it is premature and HB 402 does not require the entirety of the rule to be implemented. Consumer Group Comments at 2-4. For the reasons discussed below, this recommendation should be rejected.

Initially, a delay in approving the rule would not be lawful. Section 3 of HB 402 mandates the Commission to amend its rules to bring them into conformity with the new law. HB 402, 132 Gen. Assembly § 3 (effective Mar. 20, 2019). This directive does not evidence any intention on the part of the General Assembly that the Commission either delay implementation of the rules or partially implement them, as suggested by the Consumer Group. Consumer Group Comments at 3-4. Further, delay would inject additional uncertainty into financial decisions that are made over years, not at the last minute. Thus, the fact that the relief will not become effective for several years should not delay adoption of the rule providing the exemption now.

B. The Commission Should Reject OCTA's Proposal to Adopt a Specific Definition of Incremental Cost

Under HB 402, basic local exchange rate reductions are subject to an incremental cost floor, but the new law leaves to the Commission to determine the definition of incremental cost. R.C. 4927.12. OCTA recommends that use of long run service incremental cost ("LRSIC") based on forward-looking costs. OCTA Comments at 3-5. The Commission should reject this recommendation because it does not reflect the situational nature of the cost review.

OCTA argues that the Commission should use forward-looking LRSIC because it has done so in the past. *Id.* at 4. Oddly, however, none of the rules OCTA cited has survived the subsequent changes in Ohio law. OCTA Comments at 4, citing former Rules 4901:1-6-01(A)(9), 4901:1-4-01(K), and 4901:1-6-01(M).

This reliance on prior proceedings also ignores the changes affecting the telecommunications market and the investment goals driving HB 402. As OTA explained in its initial comments, the context of the review of incremental cost is important. OTA Comments at 3.

As OTA recommended in its initial comments, the Commission should not attempt at this stage to bind itself to a particular definition of incremental cost. Use of a more general definition would permit a party to demonstrate, if the issue arises, the costs that it believes are incremental and to provide a basis for the adoption of the party's particular approach. OTA Comments at 3-4.

C. The Commission Should Reject OCTA's Proposal to Require a Detailed Demonstration That a Price Reduction Violates the Cost Floor

In addition to seeking a defined cost floor, OCTA also urges the Commission to impose a requirement for a telephone company to file detailed cost information regarding its incremental costs if it seeks to reduce rates. This filing would then trigger a 60-day Staff review. OCTA Comments at 11-12. The Commission should reject this proposal.

Initially, there is no statutory authority to impose such a requirement. In fact, the amendment to R.C. 4927.12(B) removed a 30-day Commission-notification requirement. As is evident from this amendment, the requirements of R.C. 4927.12 are not intended to expand the review process for rate increases or decreases.

This additional requirement also does not square with current practice. OCTA does not point to any Commission rule or practice that requires a detailed filing when a rate reduction is proposed. It only makes sense that the filing requirements should be minimal when customers would benefit from a reduction in rates. Only if there is some demonstration of an anticompetitive effect should the Commission then investigate. OTA Comments at 3.

D. The Commission Should Reject OCTA's Proposal to Impose a "Same Day" Requirement When an Application Seeking a Change of Control Is Filed With the FCC

HB 402 reduced the filing requirements associated with a change of control to a notice in cases in which a party files an application concerning the change of control with the FCC. The Commission, however, would retain jurisdiction to consider certain changes of control for a domestic telephone company if the FCC does not review the transaction. Despite the obvious intent of the General Assembly to reduce the regulatory burden on most changes of control of domestic telephone companies, OCTA recommends that Rule 4901:1-6-29 require that the applicant file a notice with the Commission on the same day it makes its filing with the FCC. OCTA Comments at 13. The Commission should reject this unwarranted recommendation.

The purpose of the notice requirement is to provide the Commission with notice of the filing with the FCC. The review of a change of control starts with the FCC, and this Commission's role does not expand to a full review unless the FCC waives or chooses not to exercise its authority over the change of control. R.C. 4905.402(H). Thus, an immediate filing with the Commission is wholly unnecessary.

Further, there is no statutory requirement compelling same-day filing. R.C. 4905.402(G). Thus, if the Commission determines that it is necessary to add a time for filing, it should exercise its discretion and recognize that a filing within a reasonable time after the applicant makes its filing with the FCC is sufficient to carry out the purpose of the notice requirement.

II. CONCLUSION

HB 402 includes changes to Ohio law concerning the regulation of incumbent local exchange carriers that were enacted to maintain and accelerate telecommunications investment in Ohio. As discussed above, several of the recommendations offered by the Consumer Group and OCTA do not conform to the statutory requirements and legislative intent. Accordingly, they should be rejected.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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/s/ Frank P. Darr

Frank P. Darr

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Summary: Comments Reply Comments of Ohio Telecom Association electronically filed by Mr. Frank P Darr on behalf of Ohio Telecom Association