

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

INITIAL COMMENTS OF OHIO TELECOM ASSOCIATION

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I. Introduction

On July 2, 2019, the Public Utilities Commission of Ohio ("Commission") issued an entry containing several revisions to its proposed rules to implement R.C. 4927.10. While most of the revisions conform the proposed rules more closely to Ohio law,¹ proposed Rules 4901:1-6-02(C) and 4901:1-6-07(J) seek to impose notice requirements to discontinuance of Voice over Internet Protocol ("VOIP") that is not subject to Commission regulation. Ohio Telecom Association ("OTA"), therefore, recommends that the Commission remove the unlawful notice requirement from the revised proposed rules.

II. Argument

In the revised proposed rules, the Commission has introduced a new notice requirement for VOIP. New proposed Rule 4901:1-6-07(J) states that "[a] provider of voice service shall provide to the Commission and all affected customers not less than thirty days' notice of any planned discontinuance of such service." A proposed modification of Rule 4901:1-6-02(C) then extends the application of the notice requirement to VOIP service by "excepting" the notice requirement in proposed Rule 4901:1-6-07(J) from an exemption of VOIP from regulations contained in Chapter 4901:1-6.

¹ Specifically, Attachment C contains modifications that delete proposed Rules 4901:1-6-21(F) and (G).

Although R.C. 4927.07 provides the Commission some authority to require notice of withdrawal or abandonment of a telecommunications service by a telephone company, VOIP is exempted under R.C. 4927.03(A) from Commission regulation except in three defined instances. The three instances in which the Commission has authority over VOIP are for (1) enforcement of provisions of the Telecommunications Act of 1996, (2) mediation and arbitration as provided by the Telecommunications Act of 1996, and (3) “the protection, welfare, and safety of the public” if the Commission makes a finding that such regulation is “necessary.”²

None of the three exceptions to the exemption authorizes the Commission’s proposed rule sweeping VOIP under a notice requirement.

- First, the notice requirement does not enforce any requirement of the Telecommunications Act of 1996.
- Second, the notice requirement does not implement mediation or arbitration authorized by the Telecommunications Act of 1996.
- Third, the Commission has not made any finding that the notice requirement is necessary for the protection, welfare, or safety of the public.

Nor would such a finding be justified and defensible. Simply put, VOIP is a competitive service. Given that alternatives to VOIP exist, the discontinuance of VOIP would not give rise to an issue concerning the protection, welfare, or safety of the public that requires a general assertion of

² R.C. 4927.03(A) provides, in relevant part:

Except as provided in divisions (A) and (B) of section 4927.04 of the Revised Code and except to the extent required to exercise authority under federal law, the public utilities commission has no authority over any interconnected voice over internet protocol-enabled service or any telecommunications service that is not commercially available on September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010, unless the commission, upon a finding that the exercise of the commission’s authority is necessary for the protection, welfare, and safety of the public, adopts rules specifying the necessary regulation.

Commission intervention. Thus, this attempted extension of Commission jurisdiction violates the express limitation on Commission authority over VOIP.

To conform the rules to the Commission's lawful authority, the revised proposed rules should be modified in two ways.

- In Rule 4901:1-6-02(C), the word "rule" should be inserted after "except" and the phrase "rules 4901:1-6-07 (customer notice requirements) and" should be deleted.
- The first change would logically remove any express extension of authority to VOIP. To eliminate any doubt of the Commission's intention to conform its rules to the jurisdictional limits imposed by R.C. 4927.03(A), however, the Commission should remove proposed Rule 4901:1-6-07(J).³

III. Conclusion

In recognition of the competitive environment, the General Assembly has circumscribed the Commission's scope of regulation of VOIP. Under R.C. 4927.03(A), the Commission may exercise regulatory authority in three defined areas. None of those areas justifies the Commission's revised proposed rules requiring service providers of VOIP to provide notice of discontinuance of service. Accordingly, the Commission should adopt the modifications described in these Comments that would conform the rules to state law.

³ Importantly, Rule 4901:1-6-07(B) continues to provide a requirement for a telephone company providing a telecommunications service (other than VOIP) to provide notice if it abandons or withdraws that service. Thus, the deletion of Rule 4901:1-6-07(J) also would remove a redundant provision.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of this document upon the interested parties. I hereby certify that a copy of the foregoing *Initial Comments of Ohio Telecom Association*, was served upon the following parties of record this 17th day of July 2019, *via* electronic transmission, hand-delivery, or first class U.S. mail, postage prepaid.

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