**BEFORE**

**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 ) Case No. 14-1554-TP-ORD

Telephone Company Procedures and )

Standards. )

**INITIAL COMMENTS OF THE OHIO TELECOM ASSOCIATION**

Scott E. Elisar (Reg. No. 0081877)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 E. State Street, 17th Floor

Columbus, Ohio 43215

(614) 719-2850 (Direct Dial—Scott Elisar)

(614) 395-3925 (Mobile)

(614) 469-4653 (Fax)

selisar@mwncmh.com

(willing to accept service via email)

mpritchard@mwncmh.com

(willing to accept service via email)

**October 26, 2015** **Attorneys for the Ohio Telecom Association**

[I. INTRODUCTION 1](#_Toc433616996)

[II. RECOMMENDED RULE CHANGES 3](#_Toc433616997)

[A. Rule 4901:1-6-01(F), O.A.C. (Definition of Carrier of Last Resort) 5](#_Toc433616998)

[B. Rule 4901:1-6-01(BB), O.A.C. (Definition of Reasonable and Comparatively Priced Voice Service) 5](#_Toc433616999)

[C. Rule 4901:1-6-01(QQ), O.A.C (Definition of Willing Provider) 6](#_Toc433617000)

[D. Rules 4901:1-6-02(C) and (D), O.A.C. (Purpose and Scope) 7](#_Toc433617001)

[E. Rules 4901:1-6-07(A) and (C), O.A.C. (Customer Notice Requirements) 9](#_Toc433617002)

[F. Rule 4901:1-6-21, O.A.C. (Carrier’s Withdrawal or Abandonment of Basic Local Exchange Service (BLES) or Voice Service) 11](#_Toc433617003)

[1. Rule 4901:1-6-21, O.A.C.  (Carrier’s Withdrawal or Abandonment of Basic Local Exchange Service (BLES) or Voice Service) 11](#_Toc433617004)

[2. Rule 4901:1-6-21(A), O.A.C. 11](#_Toc433617005)

[3. Rule 4901:1-6-21(B), O.A.C. 12](#_Toc433617006)

[4. Rule 4901:1-6-21(C), O.A.C. 13](#_Toc433617007)

[5. Rule 4901:1-6-21(D), O.A.C. 13](#_Toc433617008)

[6. Rule 4901:1-6-21(E), O.A.C. 14](#_Toc433617009)

[7. Rules 4901:1-6-21(F), (G), (H) and (J), O.A.C. 15](#_Toc433617010)

[G. Rule 4901:1-6-21(I), O.A.C. (Assessment Report) and Rule 4901:1-6-37, O.A.C. (Assessments and Annual Reports) 16](#_Toc433617011)

[III. CONCLUSION 17](#_Toc433617012)

**BEFORE**

**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 ) Case No. 14-1554-TP-ORD

Telephone Company Procedures and )

Standards. )

**INITIAL COMMENTS OF THE OHIO TELECOM ASSOCIATION**

# INTRODUCTION

 The Ohio Telecom Association (“OTA”) represents a broad range of companies offering landline, wireless, Voice over Internet Protocol (“VoIP”), video, broadband and data services. OTA members are constantly investing and innovating to meet the ever-growing demand for advanced communications. Customers’ desires for additional and more advanced communications have led to a highly competitive marketplace in Ohio, with hundreds of companies selling voice, video, and data services to Ohio’s 11.6 million residents and 1 million businesses. The telecom companies in Ohio are having a multiplier effect on Ohio’s economy. They provide the foundation for all of the connected devices that are manufactured and sold, and they create a market for big data and the cloud. Furthermore, they create technology jobs for other businesses. To satisfy customers’ ever-growing demand for advanced communications and to continue to contribute to Ohio’s economy, regulatory flexibility for telecom companies is a must.

In November of 2014, the Federal Communications Commission (“FCC”) voted to issue a Notice of Proposed Rulemaking to address many of the issues involved in the national technology transition.[[1]](#footnote-1) In that notice, the FCC rightfully recognized that “the nation’s communications networks are shifting from copper networks using legacy technologies to fiber, coaxial cable, and wireless networks using Internet Protocol (IP) -based technologies to carry voice, data and video.”[[2]](#footnote-2) Providers are also transitioning the pathways that make up communications networks, from the copper wire that was mainly used in legacy networks, to optical fiber, wireless technology, and coaxial cable that are increasingly used in IP networks. As part of the technology transition, the legacy services that customers currently receive on copper networks are transitioning to advanced services that can take advantage of the capabilities of newer network technologies. For example, the number of households subscribing to interconnected VoIP service continues to grow – with at least 42 million such subscriptions in place in the U.S., according to recent figures.[[3]](#footnote-3)

Unfortunately, many of Ohio’s telecom regulations predate such services and instead are based upon an outdated telecommunications model that relied upon the old copper telephone network to transmit communications. Advances in technology and, more importantly, an increase in retail competition, have rendered many older regulations unnecessary and some of these old regulations may distort the competitive balance in the marketplace.

With the enactment of Amended Substitute House Bill 64 of the 131st Ohio General Assembly (“HB 64”), the state took an important first step to position Ohio to be prepared for, and take advantage of, the technological transition away from a monopoly-era regulation and the telecommunications legacy of the past. HB 64 creates a positive environment that will permit an orderly transition in Ohio from the legacy network of the past to the network of the future that delivers services that customers increasingly want and demand.

Against this background of change, advancement and competition, the OTA respectfully submits the following comments on the rules proposed by the Staff of the Public Utilities Commission of Ohio (“Commission”) on September 23, 2015, regarding the continuing technological transition of services by telecommunications providers.

# recommended rule changes

The OTA requests that the Commission make several modifications universally throughout the proposed rules, which – as currently drafted – exceed the Commission’s statutory authority and conflate the distinct processes set forth in R.C. 4927.10 and R.C. 4927.11. Unfortunately, the proposed rules would improperly extend HB 64’s provisions governing the withdrawal or abandonment of basic local exchange service (“BLES”) by an incumbent local exchange carrier (“ILEC”) to the withdrawal or abandonment of “voice services” by all “willing providers,” including interconnected VoIP providers and carriers using technologies not even commercially available at present. HB 64 provides no statutory authority for this, and by discouraging alternative carriers from being willing to serve customers leaving the copper network, such regulatory overreach would severely hinder the very competition HB 64 intends to promote. The General Assembly adopted HB 64 to *eliminate* “carrier of last resort” (“COLR”)-type obligations that it recognized were outdated, inappropriate and competition-stifling in today’s era, not to create new and onerous COLR-type obligations on competitive providers.

Specifically, the proposed rules exceed the statutory authority conferred by HB 64 by proposing to create a brand new COLR obligation applicable to all “willing providers,” as well as to interconnected VoIP providers and providers using technologies not presently available (regardless of their status as a willing provider). The proposed rules also attempt to assert regulatory jurisdiction over voice service and other services following an ILEC’s withdrawal or abandonment of BLES where no jurisdiction exists. The proposed rules further incorrectly combine the statutory process under R.C. 4927.11(C) to petition the Commission through an application for a waiver of the obligation to provide BLES with the statutory process for withdrawal or abandonment of BLES under R.C. 4927.10 (following action by the FCC) even though HB 64 does not require an ILEC to petition the Commission through an application.

 Finally, there is an overarching concern that the Commission may not have the authority to do much of what the Staff has proposed.  R. C. 4927.03(D) provides as follows:

Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company.

One must therefore examine Chapter 4927 in order to find the authority under which the Commission could regulate the rates charged for, or the withdrawal of, any service that is identified as a voice service alternative to basic local exchange service.  Even as amended by HB 64, no such authority can be found. Because the exercise of such power is not “specifically authorized” anywhere in Chapter 4927, it would clearly go beyond the Commission’s statutory authority to exercise such power.

The Staff’s proposals - which limit the alternative voice service provider’s rates to not more than 25% more than the ILEC’s BLES rate, and regulate the withdrawal of a qualifying voice service - both violate this explicit statutory limitation on the Commission’s authority. The OTA respectfully requests that the Commission modify the Staff’s proposed rules to correct these and other issues, which are addressed in additional detail below.

## Rule 4901:1-6-01(F), O.A.C. (Definition of Carrier of Last Resort)

The OTA requests that the phrase “an ILEC or successor” be stricken from this proposed definition as there is no underlying statutory provision to support this proposed rule change. HB 64 was enacted to ensure a smooth transition to the IP network. The proposed language creates a cyclical situation that would retain the concept of COLR responsibilities and allow those responsibilities to run in perpetuity, which is counter to the express language and purpose of HB 64. Therefore, the OTA requests that "an ILEC or successor" be stricken from this definition and that the rule be modified as follows:

4901:1-6-01(F)  "Carrier of last resort" means a~~n~~ ~~ILEC or successor~~ telephone company that is required to provide basic local exchange service on a reasonable and non-discriminatory basis to all persons or entities in its service area requesting that service as set forth in section 4927.11 of the Revised Code.

## Rule 4901:1-6-01(BB), O.A.C. (Definition of Reasonable and Comparatively Priced Voice Service)

The OTA requests that this proposed rule be revised to mirror the definition contained in R.C. 4927.10(B)(3). As currently proposed, the limiting language “and does not exceed the ILEC’s BLES rate by more than twenty-five percent” in proposed Rule 4901:1-6-01(BB) violates R.C. 4927.10(B)(3) by restricting what qualifies as a “reasonable and comparatively priced voice service,” contrary to the Legislature’s direction in R.C. 4927.10(B)(3). A more appropriate regulatory path would be to simply state that:

4901:1-6-01(BB)  “Reasonable and comparatively priced voice service” ~~is a voice service that incorporates the definition~~ shall have the same meaning as set forth in section 4927.10(B)(3) of the Revised Code. ~~and does not exceed the ILEC’s BLES rate by more than twenty-five percent~~

This revision would ensure that the rule would not place a random and subjective limitation on the technology or service offerings that are available today and may be available in the future. Therefore, the OTA requests that this rule be modified accordingly.

## Rule 4901:1-6-01(QQ), O.A.C (Definition of Willing Provider)

The OTA requests that this proposed rule be modified to reflect the statutory guidance contained in R.C. 4927.10(B), and incorporate the critical element of “willingness” on the part of the “willing provider.” Specifically, the OTA would request that the language read as follows:

4901:1-6-01(QQ)   “Willing provider” is ~~any~~ a provider of a reasonable and comparatively priced voice service that affirmatively agrees to serve a ~~offering that service to any~~ residential customer ~~affected by~~ found to be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES ~~(or voice service)~~ by an ILEC ~~(or other willing provider)~~ as specified in section 4927.10(B) of the Revised Code.

Respectfully, this revised language would establish a rule process that comports with the fail-safe mechanism set forth in HB 64, which is triggered only when it is found through a customer petition or the collaborative process established in HB 64, that a residential customer is unable to obtain reasonable and comparatively priced voice service. Unfortunately, and perhaps unintentionally, as currently drafted the proposed rule attempts to compel an entity to act as a "willing provider" simply by virtue of “offering [reasonable and comparatively priced voice] service to any residential customer affected by the withdrawal or abandonment….” Nowhere in the express statutory language does authority for such compulsion exist – by definition, a “willing provider” must be “willing,” and affirmatively agree to accept that designation.

In addition, as proposed, the definition would impermissibly extend to situations involving residential customers affected by the withdrawal or abandonment of “voice service” by a “willing provider,” rather than simply to an ILEC’s withdrawal or abandonment of BLES. Nothing in HB 64 authorizes the Commission to expand the requirements of R.C. 4927.10 to “willing providers” that withdraw or abandon “voice service.” Moreover, imposing such new and unfounded regulatory burdens will discourage alternative providers from agreeing to serve as “willing providers,” stifling competition and leaving customers with fewer choices, in direct conflict with the legislative intent of HB 64. Accordingly, the OTA respectfully requests that the Commission modify the proposed definition of a "willing provider" as set forth above.

## Rules 4901:1-6-02(C) and (D), O.A.C. (Purpose and Scope)

The OTA requests that the Commission modify proposed Rule 4901:1-6-02, O.A.C., by deleting the references to proposed Rule 4901:1-6-21 from Subsections (C) and (D) of this proposed rule. Subsection (C) attempts to impose the requirements of proposed Rule 4901:1-6-21, O.A.C., on all interconnected VoIP providers in Ohio. Subsection (D) would impose those requirements on all providers of any telecommunications service that was not commercially available on, and that uses technology that became commercially available only as of, an unidentified date.[[4]](#footnote-4)

Neither R.C 4927.10 nor HB 64 provides statutory authority for the extension of Rule 4901:1-6-21, O.A.C.’s requirements to such providers. R.C. 4927.10 is, by its very terms, limited to an *ILEC’s* withdrawal or abandonment of *BLES*. HB 64 did not grant the Commission authority to extend the obligations of R.C. 4927.10 (or proposed Rule 4901:1-6-21, O.A.C.) to interconnected VoIP providers and providers of telecommunications services that use technologies not presently commercially available (or, as noted above, to “willing providers” of “voice services”). Yet, the proposed rules impermissibly would do just that. Beyond narrow federal law exceptions that are not applicable to this situation, the Commission has no regulatory authority over interconnected VoIP service or telecommunications services that were not commercially available on, and employ technologies that only became commercially available after, September 13, 2010.[[5]](#footnote-5) Entities providing such services are not ILECs providing BLES, which are the only entities to which R.C. 4927.10’s withdrawal and abandonment process applies.

Nor does HB 64 support the attempt to extend that statute’s withdrawal and abandonment process to such providers, even if they are acting as “willing providers” providing “voice service.” The definition of BLES in R.C. 4927.01(A)(1) expressly “excludes any voice service to which customers are transitioned following a withdrawal of basic local exchange service under section 4927.10 of the Revised Code.” Similarly, R.C 4927.01(A)(18) makes clear that “‘[v]oice service’ is not the same as basic local exchange service.” And, "willing providers" are, by definition, not ILECs – rather, they provide "voice service" following an ILEC’s withdrawal or abandonment of BLES. For all of these reasons, the OTA requests that subsections (C) and (D) of proposed Rule 4901:1-6-02 be modified as follows:

4901:1-6-02(C)  A provider of interconnected voice over internet protocol-enabled service is exempt from all rules in Chapter 4901:1-6 of the Administrative Code, except for rule ~~rules 4901:1-6-21 (withdrawal of BLES) and~~ 4901:1-6-36 (TRS).

4901:1-6-02(D)  A provider of any telecommunications service that, consistent with R.C. 4927.03, ~~is~~-was not commercially available as of September 13, 2010, and that employs technology that subsequently became available for commercial use only after September 13, 2010, is exempt from all rules set forth in Chapter 4901:1-6 of the Administrative Code, except where applicable ~~for~~ rule ~~4901:1-6-21 (withdrawal of BLES) and where applicable~~, 4901:1-6-36 (TRS), in the event such provider is subsequently required under federal law to provide to its customers access to telecommunications relay service.

## Rules 4901:1-6-07(A) and (C), O.A.C. (Customer Notice Requirements)

The OTA requests that the Commission remove the references to "voice service" and "or willing provider" from subsections (A) and (C) of proposed Rule 4901:1-6-07, O.A.C. The OTA also requests that the language in subsection (C) that refers to an application be stricken and replaced with the word “withdrawal,” which is the term used in the statute. The OTA would request that the language read as follows:

4901:1-6-07(A)  Except for notices for abandonment or withdrawal of telecommunications service or withdrawal of basic local exchange service (BLES) ~~or voice service~~ by an ILEC ~~or willing provider~~ pursuant to rules 4901:1-6-26, ~~and~~ 4901:1-6-25, and 4901:1-6-21 of the Administrative Code, respectively, and upward alterations of ~~basic local exchange service (BLES)~~BLES rates pursuant to rule 4901:1-6-14 of the Administrative Code, a telephone company shall provide at least fifteen days advance notice to its affected customers, of any material change in the rates, terms, and conditions of a service and any change in the company's operations that are not transparent to customers and may impact service. Customer notice is not required for a decrease in rates.

4901:1-6-07(C)  For withdrawal of BLES ~~or voice service~~ by an ILEC ~~or willing provider~~, the ILEC ~~or willing provider~~ shall provide at least one hundred and twenty days advance notice to its affected customers in accordance with rule 4901:1-6-21 of the Administrative Code. The notice must explain how the customer is directly impacted by the ~~application~~ withdrawal and any customer action necessary as result of the ~~application~~ withdrawal. The notice shall be provided to the customer in writing consistent with FCC guidelines ~~via direct mail~~ or, if the customer consents, via electronic means.

As discussed above, HB 64 does not grant the Commission the authority to impose notice provisions for the withdrawal of "voice service" by a "willing provider." R.C. 4927.10 is limited to an *ILEC*’s withdrawal or abandonment of *BLES*, and does not authorize the Commission to impose these requirements on other types of providers and services. Furthermore, R.C. 4927.10 provides for an ILEC’s withdrawal or abandonment of BLES *following the required order from the FCC*, and the statutory process is triggered by providing notice to affected customers - not through an application to the Commission. An application to the Commission is only required where an ILEC seeks a *waiver of the requirement to provide BLES pursuant to R.C. 4927.11(C).*

Finally, as reflected above, the OTA requests that the Commission modify the proposed rule to allow the ILEC to provide written notice through the most appropriate means. The ILEC is in the best position to determine the most effective method for communicating with its customers in writing to ensure that they are notified of an upcoming withdrawal in a timely manner, including how they are impacted and the action they must take in advance of the effective date of the withdrawal.

## Rule 4901:1-6-21, O.A.C. (Carrier’s Withdrawal or Abandonment of Basic Local Exchange Service (BLES) or Voice Service)

The OTA respectfully requests that the Commission substantially revise this proposed rule, which presently exceeds the Commission’s statutory authority in several respects. First, the proposed rule improperly extends beyond ILEC withdrawal or abandonment of BLES to a “willing provider’s” withdrawal or abandonment of “voice service.” As noted several times above, neither R.C. 4927.10 nor HB 64 provides statutory authority for creating and imposing a new COLR-style obligation on “willing providers.” Next, the proposed rule mistakenly conflates the waiver application process set forth in R.C. 4927.11(C), with the notice to affected customers process set forth in R.C. 4927.10(B).

The proposed rule would also improperly extend the Commission's jurisdiction to all “voice service,” even though HB 64 grants it no such authority. Finally, the proposed rule would create Commission jurisdiction over “willing providers” in ways not authorized under the Commission’s reporting and assessment authority in R.C. 4905.10, R.C. 4905.14, and R.C. 4911.18. OTA’s proposed revisions to Rule 4901:1-6-21, O.A.C. to address these issues are discussed in more detail below.

### Rule 4901:1-6-21, O.A.C.  (Carrier’s Withdrawal or Abandonment of Basic Local Exchange Service (BLES) or Voice Service)

 As noted above, R.C. 4927.10 applies only to an ILEC’s withdrawal or abandonment of BLES. As a result, the title of the rule should be revised as follows:

4901:1-6-21  Incumbent local exchange c~~C~~arrier’s withdrawal or abandonment of basic local exchange service (BLES) ~~or voice service~~.

### Rule 4901:1-6-21(A), O.A.C.

The OTA requests that the Commission modify subsection (A) because it conflates the process set forth in R.C. 4927.10 and R.C. 4927.11(C). As discussed above, R.C. 4927.10 does not require an application to the Commission to withdraw or abandon BLES following the required FCC order. Subsection (A) should be revised to provide that:

4901:1-6-21(A)  An incumbent local exchange carrier (ILEC) shall not ~~discontinue~~ withdraw or abandon offering BLES unless (i) the federal communications commission adopts an order that allows an incumbent local exchange carrier to withdraw the interstate-access component of its basic local exchange service under 47 U.S.C. 214; and (ii) the ILEC provides at least one hundred and twenty days’ notice to the commission and to its affected customers. ~~within an exchange without filing a notice application for the withdrawal of BLES (WBL) to withdraw such service from its tariff at least one hundred and twenty days prior to the withdrawal. An application filed pursuant to this rule is subject to a one hundred and twenty-day automatic approval process. As part of this application process an ILEC must provide the following:~~

Divisions (1) through (5) of this rule should be deleted as they include application filing requirements which, as discussed, do not pertain to the withdrawal or abandonment of BLES under R.C. 4927.10, which is a notice-only process on the part of the ILEC.

### Rule 4901:1-6-21(B), O.A.C.

The OTA requests that the Commission delete subsection (B) from proposed Rule 4901:1-6-21, O.A.C., as the Commission lacks the statutory authority to regulate the withdrawal of voice service. As currently drafted, the rule creates and imposes a new COLR obligation on a new group of providers, and expands it from a requirement to provide BLES to a requirement to provide voice service indefinitely. Again, as noted above, there is no statutory authority for the Commission to create and impose a brand new COLR obligation with respect to “voice services” provided by “willing providers” or ILECs.

### Rule 4901:1-6-21(C), O.A.C.

Consistent with the OTA’s other recommendations herein, the OTA requests that the Commission delete subsection (C)’s reference to (B)(1) as well as all references to the withdrawal of “voice service.” Accordingly, the OTA recommends that the Commission modify proposed subsection (C) of the rule to provide:

4901:1-6-21(C)  If a residential customer to whom notice has been given, pursuant to paragraph~~s~~ (A)~~(2) or (B)(1)~~ of this rule, is unable to obtain reasonable and comparatively priced voice service upon the withdrawal of BLES ~~or voice service~~, the customer may file a petition with the commission within thirty-days of receiving the notice. For purposes of this rule, a petition is a written statement in any format from an affected residential customer that provides, at a minimum, the customer’s name, service address and telephone number, and that claims that the customer will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES ~~or voice service~~. Alternatively, if a residential customer is identified by the collaborative process established under section 749.10 of amended substitute House Bill 64 of the 131st general assembly as a customer who will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal of BLES ~~or voice service~~, that customer shall be treated as though the customer filed a timely petition.

### Rule 4901:1-6-21(D), O.A.C.

The OTA requests that the Commission delete subsection (D) of the proposed rule because, as noted above, the statutory process to abandon or withdraw BLES under R.C. 4927.10(B) does not require an application with the Commission. Although the proposed language sets up a process for automatic withdrawal without objection, it implies that if there is an objection, the ILEC cannot withdraw BLES. R.C. 4927.10 provides, however, that even where there are one or more residential customers that will not have a reasonable and comparatively priced voice service following the withdraw of BLES by the ILEC, the ILEC is still permitted to withdraw BLES, but if ordered by the Commission, it must provide a reasonable and comparatively priced voice service, utilizing any technology or service arrangement, to the customer. Accordingly, because the 120-day notice in R.C. 4927.10 is self-effectuating, proposed Rule 4901:1-6-21(D), O.A.C., is unnecessary and should therefore be deleted.

### Rule 4901:1-6-21(E), O.A.C.

The OTA requests that subsection (E) be modified to remove the references to a potential withdrawal of service by an “alternative provider” because the Commission lacks the statutory authority to regulate the withdrawal of “voice service” by an “alternative provider” (or by a “willing provider”). The OTA also requests that the Commission modify proposed subsection (E) to track the statutory language in R.C. 4927.10(B)(1)(a), which provides, in part, that “[i]f the public utilities commission determines after an investigation that no reasonable and comparatively priced voice service will be available to the affected customer at the customer's residence, *the public utilities commission shall* attempt to identify a willing provider of a reasonable and comparatively priced voice service to serve the customer.” (emphasis added). These revisions are reflected below:

4901:1-6-21(E)   If the public utilities commission determines after an investigation that no reasonable and comparatively priced voice service will be available to the affected customer at the customer's residence, the public utilities commission shall attempt to identify a willing provider of a reasonable and comparatively priced voice service to serve the customer. If no willing provider of a reasonable and comparatively priced voice service is identified, and if ordered by the Commission, the withdrawing or abandoning carrier shall provide or continue to provide a reasonable and comparatively priced voice service to the customer at the customer’s residence. ~~If no willing provider of a reasonable and comparatively priced voice service is identified, the ILEC or alternative provider requesting the withdrawal must provide or continue to provide a reasonable and comparatively priced voice service, via any technology or service arrangement, to the customer at the customer’s residence for not less than twelve months from the date of the order issued by this commission.~~

The OTA also requests that the Commission delete (E)(1) and (E)(2) as R.C. 4927.10(B)(2) sets forth the express process for the Commission to follow if it orders “the withdrawing or abandoning carrier to provide a reasonable and comparatively priced voice service to the customer at the customer's residence” pursuant to R.C. 4927.10(B)(1)(b). If the Commission does not delete (E)(1) and (E)(2), the Commission should modify the proposed language to track the statutory language. The statutory language in R.C. 4927.10(B)(2) does not obligate “the withdrawing or abandoning carrier” to continue providing any service under any conditions, *unless* the Commission extends its initial order. Contrary to the statute, the language in the proposed rule would require “the withdrawing or abandoning carrier” to continue to provide “a reasonable and comparatively priced voice service” even if the Commission did not extend its order. Accordingly, the Commission should delete proposed subsections (E)(1) and (E)(2) or modify them to conform to the express terms of R.C. 4927.10(B)(2).

### Rules 4901:1-6-21(F), (G), (H) and (J), O.A.C.

For the reasons discussed above, these subsections should be stricken in their entirety. HB 64 does not give the Commission authority to impose “carrier of last resort” requirements on “willing providers” or ILECs providing “voice services,” including “willing providers” that use interconnected VoIP or wireless technology. R.C. 4927.10 is limited exclusively to an ILEC’s withdrawal or abandonment of BLES, and does not authorize the Commission to impose those requirements on any provider withdrawing or abandoning other types of services, much less technologies that R.C. 4927.03 expressly prohibits the Commission from regulating. As a policy matter, the proposed subsections (F) through (J) may also serve to deter alternative providers from agreeing to serve as “willing providers.” Subsections (G) and (H) also envision filings at the Commission in the dockets where *applications* to withdraw or abandon BLES are filed by an ILEC but, as noted above, this is not the statutory process set forth in R.C. 4927.10. The Commission, as it has in the past, should continue to encourage the availability of competitive alternatives and the proposed subsections (F), (G), (H) and (J) of the rule would plainly reduce the competitive offerings available to customers by creating new and unwarranted burdens for competitive providers. Therefore, the Commission should strike the proposed subsections (F), (G), (H), and (J).

## Rule 4901:1-6-21(I), O.A.C. (Assessment Report) and Rule 4901:1-6-37, O.A.C. (Assessments and Annual Reports)

The OTA respectfully asserts that these proposed rules are outside of the confines of the Commission’s statutory authority to levy any assessment on a willing provider or on wireless resellers of lifeline services. R.C. 4905.10 specifies the Commission’s authority regarding assessments in support of its operations. That statute provides for the assessments to be made only against railroads and public utilities. A wireless reseller of lifeline services is not a “public utility” for this purpose and may not be subjected to any assessment. R.C. 4927.01(A)(18) recognizes the subset of “wireless service provider” that is a telephone company and a public utility in Ohio. However, that definition is limited:

"Wireless service provider" means a *facilities-based* provider of wireless service to one or more end users in this state. R.C. 4927.01(A)(18) (emphasis added).

Under this statutory construct, a reseller is not a facilities-based provider and, therefore, cannot be a wireless service provider. Nor have the resellers historically been treated as telephone companies or as public utilities in Ohio. Only through a statutory change could the Commission extend its assessment power to wireless resellers of lifeline services. Additionally, a willing provider under R.C. 4927.10 may or may not be a public utility that is subject to the Commission’s jurisdiction under R.C. 4905.10 and its liability for any assessments is determined solely by its public utility status. Accordingly, the OTA requests the Commission delete proposed subsection (I) to Rule 4901:1-6-21, O.A.C., and delete subsection (C) to Rule 4901:1-6-37, O.A.C.

# Conclusion

For the reasons identified above, the OTA respectfully requests that the Commission adopt the recommendations made herein.

Respectfully submitted,

/s/ *Scott E. Elisar*

Scott E. Elisar (Reg. No. 0081877)

(Counsel of Record)

Matthew R. Pritchard (Reg. No. 0088070)

McNees Wallace & Nurick LLC

21 E. State Street, 17th Floor

Columbus, Ohio 43215

(614) 719-2850 (Direct Dial—Scott Elisar)

(614) 469-4653 (Fax)

selisar@mwncmh.com

(willing to accept service via email)

mpritchard@mwncmh.com

(willing to accept service via email)

 **Attorneys for the Ohio Telecom Association**

**Certificate of Service**

 In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing *Initial Comments of the Ohio Telecom Association* was sent by, or on behalf of, the undersigned counsel for Ohio Telecom Association to the following parties of record this 26th day of October 2015, *via* electronic transmission.

 /s/ Scott E. Elisar

 Scott E. Elisar

Douglas W. Trabaris

AT&T Ohio

225 West Randolph Street, Floor 25D

Chicago, Illinois 60606

Dt1329@att.com

Mark Ortlieb

General Attorney

AT&T Services

225 West Randolph, Suite 2500

Chicago, Illinois 60606

mark.ortlieb@att.com

**On Behalf of AT&T Services, Inc**.

Benita Kahn

Stephen M. Howard

Vorys, Sater, Seymour and Pease LLP

52 East Gay Street

Columbus, Ohio 43216

bakahn@vorys.com

smhoward@vorys.com

**On Behalf of the Ohio Cable Telecommunications Association**

Patrick M. Crotty

Cincinnati Bell Telephone Co. LLC

221 East Fourth Street, Suite 1090

Cincinnati, Ohio 45202

Patrick.crotty@cinbell.com

**On Behalf of Cincinnati Bell Telephone Co. LLC**

Ellis Jacobs

Advocates for Basic Legal Equality Inc.

130 West Second St., Suite 700 East

Dayton, Ohio 45402

ejacobs@ablelaw.org

**On Behalf of Edgemont Neighborhood Coalition**

Noel M. Morgan

Legal Aid Society of Southwest Ohio LLC

215 E. Ninth St.

Cincinnati, Ohio 45202

nmorgan@lascinti.org

**On Behalf of the Legal Aid Society of Southwest Ohio LLC**

Christen M. Blend

Porter Wright Morris & Arthur, LLP

41 South High Street, 29th Floor

Columbus, Ohio 43215

cblend@porterwright.com

**On Behalf of United Telephone Company of Ohio d/b/a CenturyLink and CenturyTel of Ohio, Inc. d/b/a CenturyLink**

Bruce J. Weston

Ohio Consumers' Counsel

Terry L. Etter

Office of the Ohio Consumers' Counsel

10 W. Broad Street, Suite 1800

Columbus, Ohio 43215

Terry.etter@occ.ohio.gov

**On Behalf of the Office of the Ohio Consumers' Counsel**

Michael R. Smalz

Ohio Poverty Law Center

555 Buttles Avenue

Columbus, Ohio 43215

msmalz@ohiopovertylaw.org

**On Behalf of the Ohio Poverty Law Center**

Michael Walters

Legal Hotline Managing Attorney

Pro Seniors, Inc.

7162 Reading Road, Suite 1150

Cincinnati, Ohio 45237

mwalters@proseniors.org

**On Behalf of Pro Seniors, Inc.**

Peggy Lee

Southeastern Ohio Legal Services

964 East State Street

Athens, Ohio 45701

plee@oslsa.org

**On Behalf of Southeastern Ohio Legal Services**

Jeff Jones

Jay Agranoff

Attorney Examiners

Public Utilities Commission of Ohio

180 E. Broad Street

Columbus, Ohio 43215

Jeffrey.jones@puc.state.oh.us

Jay.agranoff@puc.state.oh.us

1. FCC Press Release, *FCC Proposes Facilitating Technology Transitions by Modernizing Consumer Protection, Competition Rules* (November 21, 2014), available at:

<https://apps.fcc.gov/edocs_public/attachmatch/DOC-330622A1.pdf>. [↑](#footnote-ref-1)
2. *Id.* [↑](#footnote-ref-2)
3. <http://www.fcc.gov/guides/ip-transition>. [↑](#footnote-ref-3)
4. The references to September 13, 2010 have been stricken from the rule, resulting in a confusing reference to “[a] provider of any telecommunications service that was not commercially available and that employs technology that subsequently became available for commercial use.” [↑](#footnote-ref-4)
5. R.C. 4927.03(A). [↑](#footnote-ref-5)