

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of)	
Rules to Implement Substitute Senate)	Case No. 10-1010-TP-ORD
Bill 162.)	

**COMMENTS
BY
MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS**

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. PROTECTING CONSUMERS DURING THE TIMING GAP BETWEEN THE STATUTE AND THE RULES.....	2
III. COMMENTS ON SPECIFIC RULES	5
Rule 4901:1-6-01 Definitions	5
Rule 4901:1-6-02 Purpose and scope.....	12
Rule 4901:1-6-03 Investigation and monitoring	14
Rule 4901:1-6-04 Application process	14
Rule 4901:1-6-05 Automatic approval and notice filing process	14
Rule 4901:1-6-06 Suspensions.....	14
Rule 4901:1-6-07 Content of customer notice	14
Rule 4901:1-6-08 Telephone company certification	15
Rule 4901:1-6-09 Eligible Telecommunications Carriers	16
Rule 4901:1-6-10 Competitive emergency services telecommunications carrier certification	19
Rule 4901:1-6-11 Tariffed services	20
Rule 4901:1-6-12 Service requirements for BLES	21
Rule 4901:1-6-13 Warm line service	25
Rule 4901:1-6-14 BLES pricing parameters.....	25
Rule 4901:1-6-15 Directory information	26
Rule 4901:1-6-16 Unfair or deceptive acts or practices	27
Rule 4901:1-6-17 Truth in billing requirements	28
Rule 4901:1-6-18 Slamming and preferred carrier freezes.....	28
Rule 4901:1-6-19 Lifeline requirements.....	29

Rule 4901:1-6-20	Discounts for persons with communications disabilities	32
Rule 4901:1-6-21	Termination of community voicemail pilot program	32
Rule 4901:1-6-22	Alternative operator service and inmate operator service.....	33
Rule 4901:1-6-23	Pay telephone access lines	33
Rule 4901:1-6-24	Wireless service provisions	34
Rule 4901:1-6-25	Withdrawal of telecommunications services	34
Rule 4901:1-6-26	Abandonment.....	35
Rule 4901:1-6-27	Provider of last resort	35
Rule 4901:1-6-28	Bankruptcy.....	36
Rule 4901:1-6-29	Telephone company procedures for notifying the commission of changes in operations	36
Rule 4901:1-6-30	Company records and complaint procedures.....	37
Rule 4901:1-6-31	Emergency and outage operations	37
Rule 4901:1-6-32	Zones of operation, boundary changes, and administration of borderline boundaries	37
Rule 4901:1-6-33	Excess construction charges applicable to certain line extensions for the furnishing of local exchange telephone service.....	38
Rule 4901:1-6-34	Filing of contracts, agreements, or arrangements entered into between telephone companies	39
Rule 4901:1-6-35	Filing of reports by telephone companies subject to the federal communications commission	39
Rule 4901:1-6-36	Telecommunication relay services assessment procedures.....	39
Rule 4901:1-6-37	Assessments and annual reports	39
IV.	CONCLUSION.....	40
APPENDIX: Recommended changes to proposed rules		

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I. INTRODUCTION AND SUMMARY

On June 13, 2010, Governor Strickland signed into law Substitute Senate Bill 162 (“Sub. S.B. 162”), which revised many of the statutes, and rescinded many of the rules of the Public Utilities Commission of Ohio (“PUCO” or “Commission”), concerning the provision of telecommunications service in Ohio to customer and carriers.¹ New R.C. 4927.03(E) directs the Commission to adopt all rules required by Sub. S.B. 162 within 120 days of the (September 13, 2010) effective date of the bill.² By Entry dated July 29, 2010, the PUCO sought comment on the PUCO Staff’s proposed rules to implement Sub. S.B. 162. Comments are due August 30, 2010; reply comments are due September 30, 2010.

The members of Ohioans Protecting Telephone Consumers (“OPTC”) whose names appear as signatories submit these comments on the PUCO Staff’s proposal.³ The

¹ In these Comments, the statutory provisions adopted in Sub. S.B. 162 will be cited as “new R.C. ____.”

² See, e.g., new R.C. 4927.05(A). The bill allows the Commission to adopt additional rules in other areas, but those rules are not subject to the 120-day requirement. See, e.g., new R.C. 4927.06(A)(1).

³ OPTC is an alliance of consumer, legal and low-income advocates that united to ensure that consumer protections were contained in Sub. S.B. 162, and continue that advocacy for the rules implementing the new law.

PUCO Staff's proposal is a collection of rules designed to address specific provisions of Sub S.B. 162 and to retain some of the PUCO rules that were not rescinded by the legislation. Although the PUCO Staff's proposals most often catch the essence of Sub. S.B. 162, some of the proposed rules miss the mark for serving Ohio consumers. These comments will primarily focus on the areas that need substantive change.

In addition, appended to these comments is a red-lined mark-up of the proposed rules. This mark-up not only provides the Commission with recommended substantive changes to the proposed rules, but also points out typographical errors and other minor problems with the proposed rules.

II. PROTECTING CONSUMERS DURING THE TIMING GAP BETWEEN THE STATUTE AND THE RULES

Sub. S.B. 162 was introduced at the behest of the incumbent local exchange carriers (ILECs"), with the Commission participating alternatively as an advocate for reducing regulation and as a "technical expert." OPTC also participated in the legislative process, in order to retain consumer protections and ensure consumer benefits.

The legislation encompassed the broadest changes to telecommunications regulation in Ohio history. Given this broad scope, it is not surprising that the enacted legislation may contain some problems that may have what are, it is hoped, unintended consequences for consumers.

One of those areas is the impact on current Lifeline programs. Section 3 of Sub. S.B. 162 provides:

Coincident with the adoption of initial rules as provided for in section 4927.03 of the Revised Code as enacted by this act, the Public Utilities Commission shall rescind the following rules and shall file the requisite notice of the rescissions with the Legislative Service Commission and the Secretary of State within five days: Chapters 4901:1-4, 4901:1-5, and

4901:1-6 of the Ohio Administrative Code, except for Rule No. 4901:1-5-09 and related definitions in Rule No. 4901:1-5-01 and except for Rule Nos. 4901:1-6-18 and 4901:1-6-24 and related definitions in Rule No. 4901:1-6-01. Rescission of these rules shall take effect as provided by law and, notwithstanding any other provision of the Revised Code, is not subject to legislative review or invalidation. **Except as provided in section 4927.12 of the Revised Code, the Public Utilities Commission shall not enforce on or after the effective date of this act against any telephone company as defined in section 4905.03 of the Revised Code as amended by this act any provision of any of the rules specified in this section, except for Rule No. 4901:1-5-09 and related definitions in Rule No. 4901:1-5-01 and Rule Nos. 4901:1-6-18 and 4901:1-6-24 and related definitions in Rule No. 4901:1-6-01.**

(Emphasis added.) Thus although the Commission’s current rules will not be rescinded until the rules proposed in this docket are effective, the Commission will not be able to enforce the current rules after September 13, 2010 (the effective date of the legislation).⁴

The BLES rate increase provisions of new R.C. 4927.12 have been described as “self-effectuating”; that is, they do not require adoption of rules in order for ILECs to impose or to seek BLES rate increases. It can be argued that the statutory requirements for basic service in new R.C. 4927.08(B) are also self-effectuating; the Commission is required to adopt rules prescribing the standards,⁵ but there is no indication that the General Assembly intended for those standards to be unenforceable until the new rules are effective.

Another area where there might be questions is the enhanced Lifeline program, which was, of course, consistently touted as a consumer benefit of the legislation.

Among the differences and similarities between the current Lifeline program – applicable

⁴ New R.C. 4927.12 mentioned in Section 3 is the provision that allows increases for basic local exchange service (“BLES”). The rules cited in the last sentence of the quoted passage are not relevant for the present discussion.

⁵ New R.C. 4927.08(B).

only to ILECs that have opted-in under Ohio Adm. Code Chapter 4901:1-4⁶ – and the statutory program – applicable to all ILECs⁷ – are:

- Both programs require a Lifeline discount that takes advantage of the maximum amount of federal funding.⁸
- Both programs allow income-based eligibility and allow eligibility based on participation in a number of federal and state low-income assistance programs. The current list of qualifying programs is set forth in Ohio Adm. Code 4901:1-4-06(B)(2); the list of qualifying programs for the new program is set forth in proposed Rule 19(H)(1).
- Both programs include advisory boards. The current program has ILEC-specific advisory boards.⁹ The new program has a single state-wide advisory board.¹⁰
- The advisory boards under both programs have marketing budgets for Lifeline promotion and outreach. The current program has an ILEC-specific budget amount.¹¹ The individual ILEC budget amount is not specified in Sub. S.B. 162.¹²

The eligibility standards, other than the income-based eligibility standard,¹³ for the new program will not be in effect until the new rules are adopted. Likewise, the new advisory board will not be in existence – and will not have a marketing budget – until created by the Commission.

Thus given the fact that the current rules will be in effect, but will not be enforceable (under the terms of Section 3 of Sub. S.B. 162), an ILEC might consider it

⁶ See Ohio Adm. Code 4901:1-4-06(B).

⁷ New R.C. 4927.13.

⁸ Under the current program, there is no specific provision regarding recovery of Lifeline discounts and expenses; new R.C. 4927.13(D) allows an ILEC to create a surcharge for that specific purpose.

⁹ Ohio Adm. Code 4901:1-4-06(B)(8).

¹⁰ New R.C. 4927.13(B)(3)(a). The provision for the advisory board “does not apply” to ILECs serving fewer than 50,000 access lines. New R.C. 4927.13(B)(3)(b).

¹¹ Ohio Adm. Code 4901:1-4-06(B)(9).

¹² One would hope that the ILECs with fewer than 50,000 access lines would take advantage of the advice of the statewide Lifeline advisory board.

¹³ That is the same under the new program and the current program: income at or below 150% of federal poverty level.

possible to declare that it did not have to provide Lifeline benefits to its customers after September 13, 2010 and before the effective date of the rules.¹⁴ An ILEC might also consider it possible to cease its Lifeline marketing and outreach expenditures and efforts until a marketing budget was established under the new advisory board structure.

One would hope that neither of these possibilities will come to pass. One would hope that the ILECs will continue their Lifeline programs – including the marketing and outreach efforts – without change, until the new rules and the new structure are in effect.¹⁵ One would also hope that, given the tremendous benefits that this legislation confers on the ILECs – and the few consumer benefits found in the bill – it would not take a Commission order to ensure that the Lifeline programs will continue at least at their current levels during this statutory gap. If such an order is necessary, however, the Commission should issue one.

III. COMMENTS ON SPECIFIC RULES

Rule 4901:1-6-01 Definitions

Use of “customer” and “end user.” In proposed rule 1(J), the PUCO Staff proposes that “customer” be defined as “any end user, person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company.” Sub. S.B. 162 does

¹⁴ Unless those customers demonstrated incomes of at or below 150% of the federal poverty level.

¹⁵ One would also hope that the few ILECs that are not participating in the current enhanced Lifeline program would begin offering the enhanced program before the effective date of the rules.

not define “customer” for purposes of Title 49.¹⁶ The definition proffered by the PUCO Staff is similar to the definition found in the current Minimum Telephone Service Standards (“MTSS”),¹⁷ except that the PUCO Staff has inserted the term “end user” in the proposed rule.

The term “end user” in this definition and elsewhere in the rules is superfluous and may cause confusion. In the latest MTSS proceeding the Commission determined that “an end user is a consumer...”¹⁸ The Commission defined a “consumer” as “one who ultimately uses or consumes a service.”¹⁹ For purposes of section (J) of the new rule, such consumers would in fact be persons, firms, partnerships, corporations, municipalities, cooperative organizations, government agencies, etc. Thus, the term “end user” already describes the other entities listed in the rule.

Absent a special connotation for the term “end user,” including the term in the rule is superfluous. Thus, “end user” should be deleted from proposed rule 1(J).

The Commission should also modify other rules to make use of “customer” consistent with its definition in proposed rule 1(J). For example, in proposed rule 1(A), the PUCO Staff offers the following explanation of Alternative Operator Services (“AOS”): “The AOS provider contracts with the customer to provide the AOS; however,

¹⁶ Sub. S.B. 162 contained a definition of “customer” for purposes of R.C. Chapter 324, which deals with taxes on utility service. The bill did not change that definition from the previous version of the chapter.

¹⁷ See Ohio Adm. Code 4901:1-5-01(K).

¹⁸ *In the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 05-1102-TP-ORD, Opinion and Order (February 7, 2007) at 12. The Commission noted that it retained the term “end user” in the definition of “Basic Local Exchange Service” in order to follow the statutory definition of BLES. *Id.*

¹⁹ See *id.* at 10.

the AOS provider does not directly contract with the end user to provide the services even though it is the end user who actually pays for the processing of the operator-assisted calls” (emphasis added). This is inconsistent with proposed rule 1(J)’s statement that the *customer* “is responsible for paying charges....” To the contrary, the AOS “customer” described in Rule 1(D) may get a portion of revenues from operator-assisted calls made from the “customer’s” location. This makes the AOS rule, Ohio Adm. Code 4901:1-6-22(B), difficult to understand.

Rather than using “end user” in the AOS definition and the AOS rule, the Commission should use the term “billed party.” This term more clearly identifies the consumer who would be charged for the service, rather than the entity that has contracted with the AOS provider for the service. The term “customer” can be eliminated from Rules 1(A) and 22(B) through the edits suggested in the appendix to these comments.

The proposed rules also include other uses of the term “end user” that may cause confusion or may be incorrect. The appendix to these comments includes suggestions for changing the references to “end user.”²⁰ On the other hand, a few references to “end user,” such as the “federal universal service end user surcharge” in the Lifeline rules, are appropriate and should be retained.²¹

Definition of “postmark.” New R.C. 4927.08(B)(4) requires that the due date for bills of BLES customers must be no less than 14 days after the date of the postmark on the bill. The statute does not define “postmark.”

²⁰ Proposed Rules 7(C), 7(D), 8(F)(1), 10(C), 12(B)(7), 19(P) and 29(C)(1)(a).

²¹ Proposed Rules 19(B)(4), 19(P)(1), 36(B) and 36(D). See also OPTC proposed rule 11(B)(1)(c).

In proposed rule 1(W), the PUCO Staff proposes the following definition for “postmark”:

[A] mark, including a date, stamped or imprinted on a bill or a piece of mail which serves to record the date of its mailing, which in no event shall be earlier than the date on which the item is actually deposited in the mail. The postmark of a bill that is sent electronically must appear on the electronic bill and shall in no event be earlier than the date which it is electronically sent.

This is identical to the definition in the MTSS.²²

This definition, however, does not provide adequate consumer protections. By allowing telephone companies to place a mailing date on a customer’s bill or disconnection notice instead of a postmark on the envelope containing the bill or notice, the Commission is giving telephone companies the ability to “game” the system by mailing the bill or notice later than the date imprinted on the bill.²³ Although the rule prohibits this activity, in reality the customer would have no way of knowing – or proving – that the company did not comply with the rule.²⁴

The Commission should not give telephone companies an opportunity to reduce the few consumer protections in Sub. S.B. 162 by giving consumers less time to pay their bills or to avoid disconnection. The Commission should require telephone companies to place the postmark on the envelope, whether it contains a bill, a disconnection notice or other correspondence to customers. For correspondence sent by regular mail, “postmark” should be defined as “a date that is stamped or imprinted on the envelope of a piece of

²² Ohio Adm. Code 4901:1-5-01(Z).

²³ See also discussion under rule 12(C)(6), below.

²⁴ Telephone company compliance with this rule as it pertains to electronic bills and notices would be more likely, since the customer would theoretically receive the bill or notice on the same date it is sent by the telephone company, and may have an e-mail showing the date the bill or notice is sent.

mail which serves to record the date of its mailing, but which in no event shall be earlier than the date on which the item is actually deposited in the mail.”

In addition, the proposed rule as it applies to electronic mail should be revised to include disconnection notices as well as customer bills. The Commission should ensure that customers who receive disconnection notices electronically also are protected from having such notices sent to them after the date of the notice. The second sentence of proposed rule 1(W) should be revised as follows: “For bills or disconnection notices that are sent electronically, the ‘postmark’ is considered to be the date on which the bill or disconnection notice is electronically sent to the customer, and such date must appear on the electronic bill or disconnection notice.”

Definition of “public safety answering point.” Proposed rules 10(C), 31(C) and 31(D) include the term “public safety answering point,” but the term is not defined in the proposed rules. In order to avoid confusion, the term should be defined. OPTC suggests the following definition: “a facility to which 9-1-1 system calls for a specific territory are initially routed for response and where personnel respond to specific requests for emergency service by directly dispatching the appropriate emergency service provider, relaying a message to the appropriate provider, or transferring the call to the appropriate provider.”

Definition of “traditional service area.” In proposed rule 1(JJ), the PUCO Staff proposes that the term “traditional service area” be defined as “the area in which an ILEC provided basic local exchange service on February 8, 1996.” This definition is not found

in Sub. S.B. 162, but instead comes from the PUCO's retail service rules.²⁵ The term is used in proposed rules addressing certification of competitive emergency services telecommunications providers, BLES pricing parameters, Lifeline requirements, ILECs' obligation to provide BLES and excess construction charges for line extensions.²⁶

The problem with the proposed rule is that some ILECs have undergone ownership changes since 1996. For example, in 1996 Ohio Bell Telephone Co. went by the name Ameritech Ohio. Ameritech became SBC in 1999,²⁷ and SBC became AT&T in 2005.²⁸ Similarly, GTE merged with Bell Atlantic in 1999 to form Verizon,²⁹ whose Ohio landline operations were acquired by Frontier this year³⁰; the former CenturyTel merged with Embarq (known as Sprint in 1996) to create CenturyLink³¹; and Alltel spun off its landline operations, which now go by the name Windstream.³²

In addition, the boundaries of some exchanges have changed since 1996. In the past fourteen years, there have been at least seven instances where exchange boundaries

²⁵ See Ohio Adm. Code 4901:1-6-01(X).

²⁶ See Proposed Rules 10(A), 14(B)(6), 19(A), 32(A), 33(A) and 33(B).

²⁷ *In the Matter of the Joint Application of SBC Communications, Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control*, Case No. 98-1082-TP-AMT.

²⁸ *In the Matter of the Joint Application of SBC Communications, Inc. and AT&T Corporation for Consent and Approval of a Change of Control*, Case No. 05-269-TP-ACO.

²⁹ *In the Matter of the Joint Application of Bell Atlantic Corporation and GTE Corporation for Consent and Approval of a Change in Control*, Case No. 98-1398-TP-AMT.

³⁰ *In the Matter of the Joint Application of Frontier Communications Corporation, New Communications Holdings, Inc. and Verizon Communications Inc. for Consent and Approval of a Change in Control*, Case No. 09-454-TP-ACO.

³¹ *In the Matter of the Joint Application of Embarq Corporation and CenturyTel, Inc. for Approval of Transfer of Control of United Telephone Company of Ohio, United Telephone Company of Indiana, Inc., and Embarq Communications, Inc.*, Case No. 08-1267-TP-ACO.

³² *In the Matter of the Application for Approval of the Transfer of Control of Alltel Ohio, Inc. and The Western Reserve Telephone Company and the Transfer of Alltel Communications Inc.'s Long Distance Customers*, Case No. 05-1580-TP-ACO.

were moved so that a different ILEC is now providing service to customers in an area.³³

Because of these, and the potential for future,³⁴ changes in ownership and exchange boundaries, the rule's reference to service territories as they existed in 1996 can create confusion. For example, it is unclear whether Frontier, which served only the Cooney exchange in 1996, would have the obligations placed upon it by proposed rule 1(JJ) in the 244 former Verizon exchanges that Frontier recently acquired.

The Commission should change the definition of "traditional service area" to reflect the ILEC service territories as they exist on the effective date of Sub. S.B. 162. The Commission should also clarify that the definition will apply to successor companies, as the PUCO Staff has proposed in the definitions of "competitive local exchange carrier" and "provider of last resort."³⁵ The Commission should thus define "traditional service area" as "the area in which an ILEC or its successor telephone company provided basic local exchange service on September 13, 2010."

³³ E.g., *In the Matter of the Application of Western Reserve Telephone Company and Ameritech Ohio for a Change in Boundaries*, Case No. 02-659-TP-ACB; *In the Matter of the Application of SBC Ohio for a Change in Boundaries Between the Nelsonville Exchange of SBC Ohio and the New Marshfield Exchange of Verizon North, Inc.*, Case No. 04-678-TP-ACB; *In the Matter of the Joint Application of AT&T Ohio and Verizon North, Inc. for the Revised Boundary Maps of the Thornville Exchange of AT&T Ohio and the Millersburg Exchange of Verizon North, Inc.*, Case No. 06-876-TP-ACB; *In the Matter of the Change in Boundaries Between the Coshocton Exchange of AT&T Ohio and the Millersburg Exchange of United Telephone Company of Ohio d/b/a Embarq*, Case No. 07-1014-TP-ACB; *In the Matter of the Change to Portion of the Boundary Between AT&T Ohio's Lockbourne Exchange and Verizon North's Ashland Exchange*, Case No. 08-253-TP-ACB; *In the Matter of the Application for a Change in the Boundaries Between the Reynoldsburg Exchange of AT&T Ohio and the Pataskala Exchange of Embarq*, Case No. 09-278-TP-ACB; *In the Matter of a Change in Boundaries Between the Holland Exchange of AT&T Ohio and the Swanton exchange of United Telephone Company of Ohio d/b/a CenturyLink*, Case No. 10-476-TP-ACB.

³⁴ For example, Nova Telephone Co. is being acquired by VNC Enterprises. *In the Matter of the Joint Application of Nova Telephone Company and VNC Enterprises, LLC Pursuant to Section 4905.402 of the Revised Code*, Case No. 10-0849-TP-ACO.

³⁵ See Proposed Rules 1(I) and 1(X).

Rule 4901:1-6-02 Purpose and scope

The Commission should insert the word “other” in proposed rule 2(A), in order to distinguish “other” providers of telecommunications services from ILECs and competitive local exchange carriers (“CLECs”).

The Commission should also revise the waiver provisions in proposed rules 2(E), 2(F) and 2(G). Proposed rule 2(E) allows waiver requests to be made “upon application or motion filed by a party....” In the first place, the use of “party” in this context is unnecessarily narrow; the term “person” should be used instead.

In any event, this proposed rule would allow the party (or person) seeking the waiver the choice of filing a stand-alone waiver application – presumably in a separate proceeding with a WVR purpose code – or filing a motion, possibly as a separate proceeding, even though the PUCO’s telecommunications application forms ask the applicant whether it is seeking a waiver of PUCO rules.

Stand-alone waiver applications should never be filed where there is a pending proceeding. Instead, the rule should reflect that stand-alone waiver requests should be filed as an application for waiver in a WVR proceeding, and that waiver requests in a proceeding requiring a telecommunications application form should be filed as a motion in that proceeding.

It must also be made clear that the Commission may not waive any of the statutory requirements. This should be explicit in the rules, as proposed in the appendix.

Proposed rule 2(F) addresses the contents of waiver requests. But the proposed rule actually contradicts proposed rule 2(E) by requiring that all waiver requests be filed

in the form of a motion in accordance with Ohio Adm. Code 4901-1-12. The rule does not mention WVR proceedings. Instead of specifying the form of the motion, which is already addressed in proposed rule 2(E), the rule should contain the warning found in proposed rule 2(G) that waiver requests would toll any automatic approval timeframes.

The proposed rules do not provide a process for waiver requests. OPTC recommends that interest persons be allowed to file objections to the waiver request within 15 days after the waiver request is filed, and the party seeking a waiver would have seven days to respond to the objections. Further, the caption of the waiver request must be descriptive (i.e., not just “Motion for Waiver”).³⁶

Proposed rule 2(G) contains a grammatical error that could require the PUCO to approve all waiver requests: “All waiver requests must be approved by the Commission....” The apparent intent of the rule is to convey that waiver requests are not considered to be granted until unless expressly approved by the PUCO. The appendix to these Comments suggests language that expresses this intent.

Finally, it appears that the PUCO Staff has, in each rule following proposed rule 1, spelled out the first appearance of some terms and provided an acronym. Further appearances of the term use the acronym. OPTC has followed this pattern, and has corrected it in the appendix to these comments where the pattern was not followed in the draft rules.

³⁶ The description would then be used in the PUCO’s daily docketing report and PUCO web site descriptions so that the public can plainly see what is the nature of the filing.

Rule 4901:1-6-03 Investigation and monitoring

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-04 Application process

OPTC suggests that the word "Commission" begin the third sentence of proposed rule 4(A)(1) in order to be consistent with the rest of the proposed rules. Also, the phrase "The most recent version" should replace the phrase "A copy" at the beginning of the last sentence of proposed rule 4(A)(1). This will clarify that only the most recent version of the telecommunications application form will be posted on the Commission's website.

Rule 4901:1-6-05 Automatic approval and notice filing process

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-06 Suspensions

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-07 Content of customer notice

Proposed rule 7(B) should specify that the notice of "abandonment or withdrawal of service and upward alterations of BLES rates" be provided to OCC thirty days in advance, at the same time it is provided to the Commission. OCC needs to be able to

respond to consumer inquiries on these changes. (The language “at the time of the filing of an application, if applicable, or” was deleted because it did not add to the effectiveness of the rule.)

The appendix to these Comments also contains edits to proposed rules 7(C) and 7(D) regarding the use of “end user” and a stylistic edit to proposed rule 7(C).

Rule 4901:1-6-08 Telephone company certification

There are five substantive changes that should be made to proposed rule 8. First, in rule 8(B), the two instances where the phrase “the effective date of these rules” appears should be deleted, and the effective date of Sub. S.B. 162 – September 13, 2010 – should be inserted. Sub. S.B. 162, in new R.C. 4927.05(A)(1), refers to the effective date of the statute, not the effective date of the rules.

Second, the last sentence of rule 8(C)(1) states that applicants “shall” file a response to a motion to intervene in a certification case. Applicants should be given the option of not responding to a motion to intervene, and thus “shall” should be changed to “may.”

Third, rule 8(C)(2) allows certification applications to be automatically approved within 30 days, unless otherwise suspended. Intervenors may wish to serve discovery on the applicant within that 30-day period. But the PUCO’s rules allow 20 days for the return of discovery responses.³⁷ Given intervenors’ discovery rights under R.C. 4903.082, the Commission should provide for expedited discovery in certification cases, as proposed in the appendix to these comments.

³⁷ E.g., Ohio Adm. Code 4901-1-19(A).

Fourth, although rule 8(E)(8) requires applicants to provide information regarding their operations in other states, the rule does not require applicants to provide information regarding any formal complaints or adjudications against them in those states. This information is essential to determining whether the applicant has the managerial and/or technical expertise to provide service in the public convenience in Ohio. In order for the Commission to have all the necessary information about the application, the Commission should amend proposed rule 8(E)(8) as recommended in the appendix to these comments.

Fifth, proposed rule 8(F)(2) should be changed as recommended in the appendix to these comments in order to make the rule more grammatically correct. The appendix also includes stylistic changes to proposed rules 8(C)(1), (D), (E)(1), (E)(5), (E)(9), (G) and (H),³⁸ and replaces the term “end user” in proposed rule (F)(2).

Rule 4901:1-6-09 Eligible Telecommunications Carriers

The Commission is to be commended for establishing rules governing the process for designation of eligible telecommunications carriers (“ETCs”). Until 2008, the Commission had rarely received requests from competitive carriers for ETC status, with ILECs “automatically” designated as ETCs. Since then, however, there have been applications from postpaid and prepaid wireline carriers and from prepaid wireless carriers to be designated as competitive ETCs (“CETCs”) eligible to receive federal funding under the low-income (Lifeline and Link Up) support mechanisms. (There have

³⁸ The change in (H) merely involves the insertion of a comma after the word “application” in the second line.

been no recent applicants seeking to receive whatever high-cost support ILECs in Ohio are eligible for.)

It is especially important that the rules provide, as they do in proposed rule 9(A), that “[t]he commission may subject such designation of CETC authority to additional conditions consistent with the public interest, convenience, and necessity.” The nature of the services provided by these applicants for CETC status, however, requires rules in addition to those proposed.

First, a CETC application must state initially whether it is limited to seeking “Lifeline-only” support, or whether the applicant will also be seeking “high-cost” support. Indeed, the Commission should formally establish a “Lifeline-only” ETC designation.

A carrier seeking “Lifeline-only” ETC designation should clearly describe the services to which the federal Lifeline discount will apply, and the rates that Lifeline customers will pay as a result, in order for the Commission to determine that the service is “consistent with the public interest, convenience, and necessity.” Any subsequent changes to the service must be made through a filing with the Commission, and cannot be effective until the Commission issues an order approving the changes.³⁹

As with the certification rule (rule 8), the ETC designation rule should require applicants that have operations in other states to provide information regarding any formal complaints or adjudications against them in those states. This information is

³⁹ This is especially important for wireless ETCs, which do not file tariffs with this Commission or the Federal Communications Commission (“FCC”).

essential to determining whether it is in the public interest for the applicant to be designated as an ETC. In order for the Commission to have all the necessary information about the application, the Commission should amend proposed rule 9 as recommended in the appendix to these comments.

Once an application is filed, the rules should encompass a public process announced through a Commission entry, including, at minimum, deadlines for intervention, a schedule for public comment (with the possibility of a public hearing, and a deadline for Commission decision with a provision for suspension). The Commission should explicitly authorize discovery in these cases, per R.C. 4903.082, and the timing of the Commission's announcement of the ETC request should accommodate that discovery.

A CETC asserting that it is "facilities-based," i.e., that provides service "either using its own facilities or a combination of its own facilities and resale of another carrier's services"⁴⁰ should describe those facilities.⁴¹ On the other hand, the FCC has granted forbearance from the § 214(e)(1)(A) requirement for certain non-facilities-based wireless carriers to provide Lifeline services.⁴² The draft rules do not appear to contemplate a CETC application by such a carrier, but should.⁴³

⁴⁰ 47 U.S.C. § 214(e)(1)(A).

⁴¹ This could be done, if the carrier chooses, through a confidential attachment to the application.

⁴² E.g., *In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 USC § 214(e)(1)(A) and 47 CFR §54.20(i)*, CC Docket No. 96-45, Memorandum Opinion and Order, 20 FCC Red 15095 (2005). The FCC granted forbearance because, with a Lifeline-only ETC, the concerns implicated by allowing a pure reseller taking from the high-cost fund do not arise.

⁴³ This is despite the Commission's grant of conditional certification to TracFone d/b/a SafeLink, which is one of the carriers to which the FCC has granted forbearance. A "non-facilities-based" carrier that wishes CETC designation should, of course, be required to cite to its FCC forbearance order.

On a related note, the statute defines “wireless service provider” as a “facilities-based provider of wireless service...”⁴⁴ Under proposed rule 24, only wireless service providers are required to register with the Commission. This apparently means that a non-facilities-based wireless carrier can be a CETC, without being registered with the Commission. This seems anomalous.⁴⁵

The appendix to these comments also includes stylistic changes in proposed rules 9(A), (B)(2), (C), (C)(1) and (C)(2).

Given the increasing number of non-ILEC low-income ETCs, the Commission should also consider creating a statewide advisory board similar to that being created under Sub. S.B. 162 (new R.C. 4927.13(A)(3)(a)). This would not need to be part of these rules, however. Although not specifically mentioned in the new law, such a board would be within the Commission’s power to create under its R.C. 4927.03(B)(1) ETC authority. The board could consist of representatives of the low-income ETCs, consumer representatives (including OCC), and the Commission staff.

Rule 4901:1-6-10 Competitive emergency services telecommunications carrier certification

The only changes recommended by OPTC are stylistic changes in proposed rules 10(A) and 10(C), and a substitution of “customer” for “end user” in proposed rule 10(C).

⁴⁴ New R.C. 4927.01(A)(18). The definition of “wireless service” does not include a facilities requirement. New R.C. 4927.01(A)(17).

⁴⁵ In a convoluted fashion, it appears that the Commission does have authority to certify a non-facilities-based wireless provider as a CETC. New R.C. 4927.04(D) gives the Commission the authority to certify ETCs, and new R.C. 4927.03(B)(2)(a) gives the Commission authority over wireless service “[t]o the extent that the commission carries out the acts described in division[] ... (D) ... of section 4927.04.....”

OPTC reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-11 Tariffed services

Proposed rule 11(A)(1) lists the services required to be tariffed. The Rules should also list installation and reconnection fees for BLES, and lifeline service, as tariffed services, in accordance with new R.C. 4927.12(F) and new R.C. 4927.13(B). Both sections require that the rates, terms, and conditions for these services be tariffed in the manner prescribed by PUCO rule.

The proposed rules define BLES as having “the meaning set forth in division (A)(1) of section 4727.01 of the Revised Code.” However, new R.C. 4927.01 defines neither lifeline service nor fees for installation and reconnection of BLES. Thus, each of these must be specified in the list of services that are required to be tariffed under proposed rule 11(A)(1).

In addition, proposed rule 19(G) specifically requires that the rates, terms and conditions for an ILEC's lifeline service must be tariffed in accordance with Rule 11(A)(1). This requirement also applies to a CLEC's lifeline service under proposed rule 19(T). In order to effectuate these rules, lifeline service must be included in the list of tariffed services in proposed rule 11(A)(1).

The items listed under Rule 11(A)(1) should also be rearranged such that the items applicable to all tariffs come first and the items specific only to BLES tariffs follow.

The appendix to these Comments also includes a stylistic change in proposed rule 11(A)(1).

Rule 4901:1-6-12 Service requirements for BLES

Proposed rule 12(B). Proposed rule 12(B) states that a violation of PUCO rules or state or federal law by a LEC providing BLES does not itself constitute inadequate service, and that a determination of inadequate service can only be made after a notice and hearing proceeding. OPTC fervently objects to proposed rule 12(B).

The proposed rule is an artifact of the days when the Commission was empowered to establish minimum telephone service standards (pursuant to now-repealed R.C. 4905.231). Under that statutory scheme, it might have been appropriate for a violation of a Commission rule (part of the MTSS) not to in itself constitute inadequate service. Now, however, with a very few minimum standards – applicable only to BLES – contained in the statute,⁴⁶ violation of the statute – i.e., new R.C. 4927.08(B)(1)-(7) – should be deemed to be inadequate service, and should not require a hearing and a Commission order. Rule 12(B) should be deleted.

Exceptions in proposed rules 12(C)(2) and (C)(5). Sub. S.B. 162 included requirements for installing BLES and for providing BLES customers with credits if service is out more than 72 hours. New R.C. 4927.08(B)(1) requires telephone companies to install BLES within five business days after a customer applies for service, and new R.C. 4927.08(B)(3)(a) requires telephone companies to credit the amount of one month's service to every BLES customer whose service is out more than 72 hours. The only exception to either of these provisions in the statute is that telephone companies may elect not to provide the outage credit to a customer who caused the outage.⁴⁷

⁴⁶ And with the Commission forbidden from establishing any additional requirements for BLES, per new R.C. 4927.08(B), or any requirements at all for bundles or packages, per new R.C. 4927.03(D).

⁴⁷ New R.C. 4927.08(B)(3)(b).

The PUCO Staff, however, proposes to carry over two groups of exceptions from the MTSS into the new rules. In proposed rule 12(C)(2), the PUCO Staff proposes that telephone companies need not meet the statutory requirement for installations if the customer has not met pertinent tariff requirements; if the installation requires special equipment or service; if the installation could not be accomplished due to military action, war, insurrection, riot, or strike; or if the customer misses an installation appointment. In proposed rule 12(C)(5), the PUCO Staff proposes that telephone companies need not provide the statutorily required credit for service outages if the outage or failure to repair is due to a customer's negligent or willful act; to a malfunction of customer-owned telephone equipment or inside wire; to military action, war, insurrection, riot, or strike; or to the customer missing a repair appointment.

New R.C. 4927.08(B) limits the Commission's ability to prescribe BLES standards other than those enumerated in the statute; the Commission "shall adopt no other rules regarding that service except as expressly authorized in this chapter...." The statute does not expressly (or otherwise) authorize the Commission to provide the exceptions in proposed rules 12(C)(2) and 12(C)(5). Thus, the exceptions should be deleted. Instead, telephone companies that fail to meet the statutory requirements for installation and/or repair of BLES should be permitted to file a waiver request, if it wants to avoid the statutory finding of inadequate service.

Proposed rule 12(C)(6). New R.C. 4927.08(B)(4) requires that due dates for BLES must be at least fourteen days after the date the customer's bill is postmarked. The PUCO Staff has mirrored this requirement in proposed rule 12(C)(6). The PUCO Staff, however, also attempts to incorporate in the rule a provision from the MTSS that is not

included in the statute. The PUCO Staff proposes that bills need not have a postmark on the envelope, but instead may include a mailing date on the bill itself. This goes beyond the Commission's statutory authority under new R.C. 4927.08(B).⁴⁸

Nothing in the statute indicates that the General Assembly intended "postmark" to have anything other than its usual meaning, e.g., "an official mark stamped on letters and other mail, serving as a cancellation of the postage stamp and indicating the place, date, and sometimes time of sending or receipt."⁴⁹ Thus the provision of proposed rule 12(C)(6) that "[t]he postmark date may appear on the bill rather than on the envelope, as long as the postmark date is never earlier than the date the bill actually enters the mail" improperly expands on the term used by the General Assembly.⁵⁰ The Commission should therefore delete the second sentence of proposed rule 12(C)(6).

Proposed rule 12(C)(9). This proposed rule is a carryover from the MTSS,⁵¹ and attempts to enumerate the instances in which a customer's service may be disconnected without notice. Under the proposed rule, a customer's service may be disconnected without notice if the customer has tampered with the LEC's property, if the customer's use of telephone service or equipment interferes with other customers' service, or to address the safety of individuals or property. Because new R.C. 4927.08(B) limits the Commission's authority to adopt rules regarding service standards, proposed rule 12(C)(9) should be deleted.

⁴⁸ See also discussion above under rule 1(W).

⁴⁹ See <http://dictionary.reference.com/browse/postmark>.

⁵⁰ See R.C. 1.42.

⁵¹ See Ohio Adm. Code 4901:1-5-10(H).

If, however, the PUCO determines it has the authority to adopt this rule, the Commission should make several changes regarding the rule. First, the rule is situated between two rules that address disconnection for nonpayment. Proposed rule 12(C)(9), however, addresses disconnection for circumstances other than nonpayment. The rule should come after proposed rule 12(C)(10).

Second, for some reason the PUCO Staff did not carry forward the provision in the MTSS that enumerates instances where a LEC **must** make reasonable efforts to notify a customer before disconnection occurs. Those instances include when the customer does not comply with the LEC's tariff or the contract with the LEC; when telephone service to the customer violates any law or regulation; when the LEC is refused access to its facilities or equipment on the customer's property or property leased by the customer; and when the customer is suspected of engaging in any fraudulent action to obtain or maintain telephone service.⁵²

If the Commission has the authority to enumerate those instances where a LEC may disconnect BLES without notice, it should also have the authority to require that BLES customers receive reasonable notice of disconnection for other purposes. Rather than enumerate the circumstances under which reasonable notice of disconnection is required, the Commission should require that reasonable notice of disconnection be provided to BLES customers in all instances other than for nonpayment, which has statutory requirements, and for the instances which involve public safety issues and

⁵² See Ohio Adm. Code 4901:1-5-10(G).

interference to other customers' service. OPTC suggests the following language for such a rule:

IN ALL OTHER INSTANCES REGARDING DISCONNECTION OF BLES, THE LEC MUST MAKE REASONABLE EFFORTS TO NOTIFY THE CUSTOMER, EXCEPT THAT NO CUSTOMER NOTICE IS REQUIRED PRIOR TO DISCONNECTION FOR EITHER OF THE FOLLOWING REASONS:

(A) A USE OR MISUSE OF TELEPHONE SERVICE OR EQUIPMENT WHICH ADVERSELY AFFECTS TELEPHONE SERVICE TO OTHER CUSTOMERS.

(B) IN ORDER TO ELIMINATE, MITIGATE, OR AVOID A SAFETY HAZARD TO CUSTOMERS OR THEIR PREMISES, TO THE PUBLIC, OR TO THE LEC'S PERSONNEL OR FACILITIES.

Rule 4901:1-6-13 Warm line service

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-14 BLES pricing parameters

Because only LECs offer BLES, the reference to "telephone company" in proposed rule 14(B)(1) is unnecessary. Instead, the term "local exchange company" should be used.

Proposed rule 14(B)(3) should refer to a "single BLES line" instead of a "primary BLES line." If the Commission does not make this change, "primary BLES line" should be defined in Rule 1. "Single BLES line" appears to be descriptive enough.

The phrase “and may be priced at market-based rates” should be deleted from proposed rule 14(B)(5) because the term is undefined. The phrase is also unnecessary and does not add anything to the rest of the sentence.

The last sentence of proposed rule 14(C)(1)(c) should be deleted. The purpose of the last sentence is to define “alternative provider,” however, this term is already defined in Rule 1, using the same wording.

Proposed rule 14(F)(5) should require notice of increases to BLES rates to OCC in addition to affected customers and to PUCO Staff. Such notice should be provided no later than it is provided to customers.

In addition, the appendix to these Comments include a grammatical change to proposed rule 14(B)(4) and stylistic changes to proposed rules 14(D) and (G)(3).

Rule 4901:1-6-15 Directory information

The words “for customer pickup” should be added to proposed rule 15(B). This would prevent a LEC from claiming that it is complying with this rule by, for example, making a single copy of the directory (perhaps chained to a counter) available at a grocery store. Further, making a copy available should be an alternative for consumers, rather than the only method the LEC makes available. The elderly and others may find it difficult to travel to the store or other location where the directories may be picked up. Thus the “or” in the draft rule has been changed to “and.”

In addition, proposed rule 15(C) has been modified to ensure that a LEC providing BLES must provide a **free** listing in the directory. LECs charge to keep

numbers **out of** the directory; they should not be allowed to also charge for putting numbers in the directory.

Stylistic changes should also be made in proposed rule 15(A), as shown in the appendix to these Comments.

Rule 4901:1-6-16 Unfair or deceptive acts or practices

Proposed rule 16(B)(1). New R.C. 4927.06(A)(1), as adopted in Sub. S.B. 162, requires, in part, that: “(1) Any communication by the company, including, but not limited to, a solicitation, offer, or contract term or condition, shall be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations.” The PUCO Staff has attempted to address this provision in proposed rule 16(B)(1), which is nearly identical to current Ohio Adm. Code 4901:1-5-04(B)(1). Proposed rule 16(B)(1) does not have the same applicability as the statute, however.

Under proposed rule 16(B)(1)(a), telephone companies need only be “[c]lear, conspicuous and accurate” in disclosing “applicable information” to customers. But the statute also requires telephone companies to be **truthful** in making such disclosures. Similarly, proposed rule 16(B)(1)(b) requires only that telephone companies be “[c]lear in identifying any material exclusions, reservations, limitations, modifications, or conditions....” But new R.C. 4927.06(A)(1) also requires such disclosures to be truthful, conspicuous and accurate. Likewise, proposed rule 16(B)(1)(c) requires telephone companies to be “[t]ruthful, not misleading, and clear in identifying all material

limitations....” The statute, however, also requires such identifications to be conspicuous and accurate.

The requirement that disclosures be truthful, clear, conspicuous and accurate should apply to all three subsections of proposed Rule 16(B)(1). The Commission must modify the rule as proposed in the appendix to these comments.

In addition to the changes discussed above, the appendix to these comments contains other changes to proposed rules 16(C) and (D).

Rule 4901:1-6-17 Truth in billing requirements

Except for stylistic changes in proposed rule 17(A), OPTC has no comments on this rule, but reserves the right to respond to others’ comments in reply comments.

Rule 4901:1-6-18 Slamming and preferred carrier freezes

Sub. S.B. 162 added new R.C. 4927.21 to the Commission’s – and consumers’ – complaint arsenal. OPTC has, therefore, added it to the jurisdictional list in proposed rule 18(D).

OPTC has also moved the word “only” in Rule 12(E) to modify “in accordance with the rules and procedures prescribed by the FCC” rather than “offer.” That appears closer to the intent of this rule.

The appendix to these Comments also includes stylistic changes to proposed rule 18(D).

Rule 4901:1-6-19 Lifeline requirements

The changes to the Lifeline program were touted as one of the (few) benefits to consumers contained in Sub. S.B. 162. OPTC is determined to ensure that those benefits are realized.⁵³ These comments should be reviewed in that context, moving through the proposed rule paragraph by paragraph.

To begin, of course, there is a typographical error in the heading of this rule in the Commission Entry. The rule should be renumbered as “4901:1-6-19.”

More substantively, proposed rule 19(B)(2) describes the Lifeline service connection benefit as, “[n]ot more than once per customer at a single address in a twelve-month period, a waiver of all nonrecurring service order charges for establishing service....” This would be improved by a change to “[a] waiver of all nonrecurring service order charges for establishing service, available once every twelve months per customer.” If a Lifeline customer moves out of the address, there will be two residents at that address in the same year – the person who moved out and the person who moved in. The key is that the **person** gets free installation only once a year, not that the **address** gets free installation only once a year.

Proposed rule 19(F) describes the creation and activities of the Lifeline advisory board required by new R.C. 4927.13(A)(3)(a).⁵⁴ The statute is not specific, especially about the organization of the board, but the proposed rule makes sense, except in two respects: first, to the extent that it might be interpreted to make PUCO Staff’s decisions on the organization of the board final (because the Rule as drafted indicates that the

⁵³ See Section II, above.

⁵⁴ OPTC proposes, for clarity’s sake, to include a reference to Rule 19(F) in Rule 19(E).

Commission may review only **decisions** of the advisory board); and second, to the extent that the rule states that “the commission may review **and approve** decisions of the advisory board” (emphasis added), implying that the Commission may not **disapprove** the board’s decisions. OPTC suggests using language similar to current Ohio Adm. Code 4904:1-4-06(B)(8), to state: “Decisions on the organization of the board and board decisions, including how the lifeline marketing, promotion and outreach activities are implemented are subject to commission review” in order to solve both of these problems.

With regard to the programs that provide Lifeline eligibility, proposed rule 19(H)(1)(d) needs to be corrected to “Social Security Disability Insurance.”

Proposed rule 19(N) should be amended to ensure that a copy of non-boilerplate Lifeline customer notices are provided to OCC when they are submitted to PUCO Staff.

Proposed rule 19(P) establishes the processes for the surcharge that will allow ILECs to recover their Lifeline expenses from their non-Lifeline customers. OPTC has a number of concerns with this proposed rule.

First, the new statute states that an ILEC

may recover from end users ... other than lifeline service customers, by a method approved by the public utilities commission, any lifeline service discounts and any other lifeline service expenses **that the public utilities commission prescribes by rule** and that are not recovered through federal or state funding, except for expenses incurred under division (A)(3)(a) of this section.⁵⁵

This shows that the discounts and expenses subject to recovery may only be those the Commission prescribes by rule; the statute is not an open-ended invitation to the ILECs. Thus in this rule the Commission must create a list of eligible discounts and expenses.

⁵⁵ New R.C. 4927.13(D) (emphasis added). The “expenses incurred under division (A)(3)(a)” are those for the statewide Lifeline advisory board and Lifeline outreach and marketing.

This means that the phrase “such as” must be deleted for both discounts and expenses in Rule 19(P)(1). It also means that Rule 19(P)(2) must be deleted in its entirety, because that provision’s entire purpose is to allow ILECs to propose recovery of expenses and discounts that the Commission has **not** “prescribed by rule.”

With regard to the specific expenses and discounts that the draft rule proposes for recovery, current federal law allows the collection of “federal universal service fund end user charges” from Lifeline customers, and nothing in the new statute prohibits such collection; thus the ILECs should not be able to recover these expenses from other customers. Further, the rate increases that the new statute prohibits being charged to Lifeline customers (i.e., the \$1.25 increases for basic service), from which Lifeline customers are shielded only through January 1, 2012 (i.e., the “recurring retail price differences between the frozen lifeline service rate and residential BLES rates”) are not “discounts” or “expenses” of the Lifeline program, and cannot be collected through the surcharge.

At least for the very first filing for each ILEC, it appears that more than 30 days will be needed for review, in order to ensure that recovery is only for proper discounts and expenses. OPTC has proposed that the first application for each ILEC have a ninety-day timeline; subsequent applications may have a thirty-day timeline. Further, it should be specified that the Commission may suspend any such application and may hold a public hearing if it deems necessary.

Proposed rule 19(R) describes the process for ensuring that there is not over-recovery of the Lifeline expenses. But there is also a possibility of under-recovery. The

rule needs to specify that any over-recovery (or under-recovery) will be offset against (or added to) the following year's surcharge.

Proposed rule 19(S) should provide that if the PUCO Staff requests additional information regarding subscription to Lifeline and disconnection of Lifeline customers, this information will also be provided to OCC.

The appendix to these comments includes additional changes to proposed rules 19(A), (B)(1)-(5), (E), (G), (H), (O),⁵⁶ (Q) and (R).

Rule 4901:1-6-20 Discounts for persons with communications disabilities

Except for inserting the term “directory assistance” in proposed rule 20(A)(2), OPTC has no comments on this rule, but reserves the right to respond to others’ comments in reply comments.

Rule 4901:1-6-21 Termination of community voicemail pilot program

Section 6 of Sub. S.B. 162 requires the Commission to implement a community voicemail pilot program. Section 6(G) states that the Commission “may” adopt rules as it finds necessary to carry out the section, but also states that the Commission “**shall** adopt rules specifying how recipients of the service are to be notified or educated of the program’s termination.” (Emphasis added.) In the first place, this is not one of the rules that must be adopted within the 120-day timeframe of new R.C. 4927.03(E). More substantively, the draft rule does not accomplish what Sub. S.B. 162 directs. OPTC suggests adding the following language to this proposed rule: “The commission will,

⁵⁶ Specifically, the addition of a period and removal of a spacing problem in “C.F.R.”

upon acceptance of bid(s), establish by rule the manner in which recipients of services under the community voicemail service pilot program will be notified or educated of the program's termination."

Rule 4901:1-6-22 Alternative operator service and inmate operator service

The main issue with this rule is the confusion surrounding "customer" and "end user," as discussed earlier in these comments regarding definitions. The changes recommended in the appendix to these comments should resolve this issue.

There may also be instances where the caller is someone other than the "billed party," such as with collect calls. In such instances, the caller may need information regarding charges and terms and conditions of service. The changes recommended in the appendix address OPTC's concerns in this area.

Rule 4901:1-6-23 Pay telephone access lines

Proposed rule 23(A)(3) currently requires "supporting documentation including, but not limited to, the federal communications commission (FCC) new services test (NST) for pay telephone access lines...." This would be much clearer if it read "supporting documentation, including but not limited to, documentation showing that the rate passes the federal communications commission's new services test for pay telephone access lines...."⁵⁷

In addition, the appendix to these comments includes other changes to proposed rules 23(A)(1) and 23(A)(3).

⁵⁷ Since neither "FCC" nor "NST" are used later in this rule, the acronyms are omitted.

Rule 4901:1-6-24 Wireless service provisions

This rule, despite being titled “Wireless service provisions,” addresses only “wireless service providers,” i.e. facilities-based wireless carriers.⁵⁸ This unnecessarily limits the Commission’s authority under new R.C. 4927.03(B)(1). Therefore, OPTC suggests adding a paragraph (H) to this rule, as follows: “The Commission has authority over resellers of wireless service as set forth in section 4927.03(B)(1), Revised Code.” Various other typographical and stylistic edits are also included in the appendix.

In addition, changes to proposed rules 24(A), (B), (D), (F) and (G) are included in the appendix to these comments.

Rule 4901:1-6-25 Withdrawal of telecommunications services

The PUCO Staff’s proposed rule 25(B)(1) would require CLECs wishing to discontinue offering BLES to make a zero-day notice filing to the PUCO, after giving the 30-day notices required by new R.C. 4927.07(A). CLECs should not be discouraged from filing applications that have a longer automatic approval period, and thus the reference to a zero-day notice filing should be deleted. The Commission should change this rule as recommended in the appendix to these comments.

A change also has been suggested to the introductory language of proposed rule 25(D) to clarify the rule’s application. A stylistic change should also be made to proposed rule 25(A).

⁵⁸ See new R.C. 4927.01(A)(18).

Rule 4901:1-6-26 Abandonment

Under new R.C. 4927.07(B), a telephone company “may abandon entirely telecommunications service in this state if it gives at least thirty days’ prior notice to the commission, to its wholesale and retail customers, and to any telephone company wholesale provider of its services.”⁵⁹ Proposed rule 26(A)(3) mirrors this portion of the statute. But because OCC is available to answer inquiries by residential customers, OCC should also receive notices of plans to withdraw service to residential customers.

In addition, because paragraph (A) is the only lettered paragraph to this rule, the numbered paragraphs should be redesignated with letters. The appendix to these comments suggests edits to achieve this.

Rule 4901:1-6-27 Provider of last resort

In proposed rule 27(D), inserting “requesting” before the second occurrence of “person or entity” will add clarity.

Regarding the application for a waiver of the provider of last resort (“POLR”) responsibility in proposed rule 27(G), OPTC recommends first, that “all of” be added, to ensure that all of this information is included in the application; second, that the list be consistently presented; third, that “description” of boundaries be substituted for “outline”; third, that, consistent with new R.C. 4927.4927.11(C), the phrase “but not limited to” be deleted from the description of the acceptable rationales for the requested waiver (the only rationales included in the statute are unusual technical limitations and financial

⁵⁹ This does not apply to BLES provided by an ILEC. New R.C. 4927.07(C)(1).

hardship); and fourth, again, consistent with the new statute, that “just and” be deleted from the description of substitutes for BLES.

Further, new R.C. 4927.11(C) requires the Commission to define “affected persons” in a rule. It appears that the Commission has merely inserted the term “persons impacted,” rather than attempting to provide a definition. OPTC has proposed a definition that includes affected customers, local governments, and, where residential customers are affected, OCC.

The appendix to these comments also corrects a typographical error in proposed rule 27(F).

Rule 4901:1-6-28 Bankruptcy

Telephone company bankruptcies can negatively impact residential customers, if the company serves residential customers. Therefore, OPTC proposes the addition of the following language to this rule: “If residential customers are affected, the telephone company must notify the office of the consumers’ counsel.”

Rule 4901:1-6-29 Telephone company procedures for notifying the commission of changes in operations

The heading of proposed rule 29(E) refers to “[p]rocedures for merger and change in control applications of a LEC providing BLES.” The rule adds additional language describing such companies, which is unnecessary given the definition in Rule 1. The language should be deleted.

In addition, the appendix to these comments includes changes to proposed rules (C)(1) and (D), and the substitution of “customer” for “end user” in proposed rule (C)(1)(a).

Rule 4901:1-6-30 Company records and complaint procedures

In proposed rule 30(B), there is a requirement that a telephone company provide PUCO Staff with company contact information. This information should also be provided to OCC.

In addition, the appendix to these comments includes stylistic changes in proposed rules 30(A) and (A)(2).⁶⁰

Rule 4901:1-6-31 Emergency and outage operations

Because of OCC’s role in assisting and providing information to consumers, OCC should receive the required notices regarding the outages described in proposed rules 31(B) and (C), and the outage information described in proposed rule 31(E). OCC should also be able to review the emergency plan described in proposed rule 31(F).

The appendix to these comments also includes stylistic changes to proposed rules 31(C), (D), (E), (E)(1), (F), (F)(7), (F)(8) and (G).

Rule 4901:1-6-32 Zones of operation, boundary changes, and administration of borderline boundaries

This proposed rule addresses only boundary changes, and does not refer to “Zones

⁶⁰ Specifically in (A)(2), the deletion of a comma after the word “detail.”

of operation.” OPTC suggests that “Zones of operation” be removed from the heading.

Rule 4901:1-6-33 Excess construction charges applicable to certain line extensions for the furnishing of local exchange telephone service

It seems that adding the word “the” before references to “construction charges” in proposed rule 33(B) would increase clarity. And the reference in proposed rule 33(C) to “they” should be expanded so that both “the ability to so charge and the amount of the charge” are required to be in an ILEC’s tariff.

More importantly, the rule should also include a **definition** for excess construction charges. The Commission’s current Retail Service Rules contain a formula for determining the maximum charges for construction to a customer, which addresses excess charges:

(1) Where only one applicant is to be furnished service, the length of construction required to reach the point of entrance of the applicant’s private property, measured along the public right-of-way either from the nearest existing distributing plant of the LEC or the nearest point to which the LEC plans to extend its facilities under an approved construction program, whichever is closer, shall be determined by the LEC.

For the length thus determined, the applicant may be required to pay construction charges in excess of the cost one-half mile of standard pole line in place. A credit against the cost of excess construction charges may be given where an applicant performs the labor of digging holes, or trimming or removing trees in the right-of-way in accordance with the LEC’s specifications.⁶¹

In order to protect consumers from unreasonable charges for excess construction, the Commission should include a similar formula in the proposed rules.

⁶¹ Ohio Adm. Code 4901:1-6-22(A)(1).

Rule 4901:1-6-34 Filing of contracts, agreements, or arrangements entered into between telephone companies

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

Rule 4901:1-6-35 Filing of reports by telephone companies subject to the federal communications commission

Except for adding a comma after the word "commission" in the second line, OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

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

OPTC suggests adding "federal regulations" to "federal law" in proposed rule 36(B), for clarification. The abbreviation "FCC" is not used again after its appearance in proposed rule 36(D), so it has been deleted. The description of the timeline for a ZTA in proposed rule 36(G) is unnecessary, and has also been deleted.

Rule 4901:1-6-37 Assessments and annual reports

OPTC has no comments on this rule, but reserves the right to respond to others' comments in reply comments.

IV. CONCLUSION

The changes described herein and detailed in the appendix to these comments would help to ensure that consumers receive the full consumer protections and benefits of Sub. S.B. 162. The Commission should adopt the changes recommended by OPTC.

Respectfully submitted,

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**OPTC's PROPOSED EDITS TO
STAFF PROPOSED RULES for Case No. 10-1010-TP-ORD**

NOTE: Deletions are shown in ~~strike through~~ and additions are in ALL CAPS AND UNDERLINED.

4901:1-6-01 Definitions.

As used within this chapter, these terms denote the following:

- (A) "Alternative operator services (AOS)" means any intrastate operator-assisted services, other than inmate operator services (IOS), in which the customer and the end user are totally separate entities. The AOS provider contracts with the customer to provide the AOS; however, the AOS provider does not directly contract with the ~~end user~~ BILLED PARTY to provide the services even though it is the ~~end user~~ BILLED PARTY who actually pays for the processing of the operator-assisted calls. AOS does not include coin-sent calls.
- (B) "Alternative provider" includes a telephone company, including a wireless service provider, a telecommunications carrier, and a provider of internet-protocol enabled services, including voice over internet protocol.
- (C) "Basic local exchange service" (BLES)" shall have the meaning set forth in division (A)(1) of section 4927.01 of the Revised Code.
- (D) "Bundle or package of services" shall have the meaning set forth in division (A)(2) of section 4927.01 of the Revised Code.
- (E) "Carrier access" shall have the meaning set forth in division (A)(3) of section 4927.01 of the Revised Code.
- (F) "Commission" means the public utilities commission of Ohio.
- (G) "Competitive eligible telecommunications carrier (CETC)" means a carrier, other than an incumbent local exchange carrier, designated by a state commission as an eligible telecommunications carrier.
- (H) "Competitive emergency services telecommunications carrier (CESTC)" means a telephone company that is a 9-1-1 system service provider that with respect to a service area, that was not an incumbent 9-1-1 system service provider on or after the date of enactment of the Telecommunications Act of 1996 (1996 Act).
- (I) "Competitive local exchange carrier (CLEC)" means, with respect to a service area, any facilities-based and nonfacilities-based local exchange carrier that was not an incumbent local exchange carrier on the date of enactment of the 1996 Act or is not an entity that, on or after such date of enactment, became a successor or assignee of an incumbent local exchange carrier.
- (J) "Customer" means any ~~end user,~~ person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the TARIFFS OF AND CONTRACT WITH ~~rules and regulations of~~ the telephone company.
- (K) "Eligible telecommunications carrier (ETC)" means a carrier designated by a state commission as defined in subpart C of FCC 47 C.F.R. 54.201.

- (L) "Exchange area" means a geographical service area established by an incumbent local exchange carrier and approved by the commission.
- (M) "Facilities-based CLEC" means, with a respect to a service area, any local exchange carrier that uses facilities it owns, operates, manages or controls to provide basic local exchange services to consumers on a common carrier basis; and that was not an incumbent local exchange carrier on the date of the enactment of the 1996 Act. Such carrier may partially or totally own, operate, manage or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of the incumbent local exchange carrier's local exchange services.
- (N) "Federal poverty level" shall have the meaning set forth in division (A)(4) of section 4927.01 of the Revised Code.
- (O) "Flat rate" service means unlimited number of local calls at a fixed charge.
- (P) "Incumbent local exchange carrier (ILEC)" shall have the meaning set forth in division (A)(5) of section 4927.01 of the Revised Code.
- (Q) "Inmate operator services (IOS)" means any intrastate telecommunications service initiated from an inmate telephone, i.e., a telephone instrument set aside by authorities of a secured correctional facility for use by inmates or juvenile offenders.
- (R) "Internet protocol-enabled services" shall have the meaning set forth in division (A)(6) of section 4927.01 of the Revised Code.
- (S) "Large ILEC" means any ILEC serving fifty thousand or more access lines in Ohio.
- (T) "Local exchange carrier" shall have the meaning set forth in division (A)(7) of section 4927.01 of the Revised Code.
- (U) "Local service area" shall have the meaning set forth in division (A)(8) of section 4927.01 of the Revised Code.
- (V) "Nonresidential service" means a telecommunication service primarily used for business, professional, institutional or occupational use.
- (W) "Postmark" means a ~~mark, including a date,~~ THAT IS stamped or imprinted on THE ENVELOPE OF a bill or a piece of mail which serves to record the date of its mailing, BUT which in no event shall be earlier than the date on which the item is actually deposited in the mail. ~~The postmark of a FOR bills OR DISCONNECTION NOTICES that is ARE~~ sent electronically, THE "POSTMARK" IS CONSIDERED TO BE THE DATE THE BILL OR DISCONNECTION NOTICE IS SENT TO THE CUSTOMER, AND SUCH DATE must appear on the electronic bill OR DISCONNECTION NOTICE~~and shall in no event be earlier than the date which it is electronically sent.~~
- (X) "Provider of last resort" means an 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.
- (Y) "PUBLIC SAFETY ANSWERING POINT (PSAP)" MEANS A FACILITY TO WHICH 9-1-1 SYSTEM CALLS FOR A SPECIFIC TERRITORY ARE INITIALLY ROUTED FOR RESPONSE AND WHERE PERSONNEL RESPOND TO SPECIFIC REQUESTS FOR EMERGENCY SERVICE BY DIRECTLY DISPATCHING THE APPROPRIATE EMERGENCY SERVICE PROVIDER, RELAYING A MESSAGE TO THE APPROPRIATE PROVIDER, OR TRANSFERRING THE CALL TO THE APPROPRIATE PROVIDER.

(YZ) "Regulated service" means service under the jurisdiction of the commission.

(ZAA) "Residential service" means a telecommunications service provided primarily for household use.

(AABB) "Small business" shall have the meaning set forth in division (A)(9) of section 4927.01 of the Revised Code.

(BBCC) "Tariff" means a schedule of rates, tolls, rentals, charges, classifications, and rules applicable to services and equipment provided by a telephone company that has been filed or posted in such places or in such manner as the commission orders.

(GGDD) "Telecommunications" shall have the meaning set forth in division (A)(10) of section 4927.01 of the Revised Code.

(DDEE) "Telecommunications Carrier" shall have the meaning set forth in division (A)(11) of section 4927.01 of the Revised Code.

(EEFF) "Telecommunications relay service (TRS)" means intrastate transmission services that provide the ability for an individual who has a hearing or speech impairment to engage in a communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual, who does not have a hearing or speech impairment, to communicate using voice communication services by wire or radio. TRS includes services that enable two-way communication between an individual who uses a telecommunications device for the deaf or other nonvoice terminal device and an individual who does not use such a device.

(FFGG) "Telecommunications service" shall have the meaning set forth in division (A)(12) of section 4927.01 of the Revised Code.

(GGHH) "Telephone company" shall have the meaning set forth in division (A)(13) of section 4927.01 of the Revised Code.

(HHII) "Telephone exchange service" shall have the meaning set forth in division (A)(14) of section 4927.01 of the Revised Code.

(JJJJ) "Telephone toll service" shall have the meaning set forth in division (A)(15) of section 4927.01 of the Revised Code.

(JJKK) "Traditional service area" means the area in which an ILEC OR SUCCESSOR TELEPHONE COMPANY provided basic local exchange service on February 8, 1996 SEPTEMBER 13, 2010.

(KKLL) "Voice over internet protocol service ~~(VoIP)~~" shall have the meaning set forth in division (A)(16) of 4927.01 of the Revised Code.

(LLMM) "Wireless service" shall have the meaning set forth in division (A)(17) of section 4927.01 of the Revised Code.

(MMNN) "Wireless service provider" shall have the meaning set forth in division (A)(18) of section 4927.01 of the Revised Code.

4901:1-6-02 Purpose and scope.

- (A) The rules set forth in Chapter 4901:1-6 of the Administrative Code, apply to all incumbent local exchange carriers (ILECs), competitive local exchange carriers (CLECs), and OTHER providers of telecommunication services, unless otherwise specified in this chapter or commission order.
- (B) A wireless service provider is exempt from all rules in Chapter 4901:1-6 except rules 4901:1-6-24 (wireless service provisions), 4901:1-6-09, eligible telecommunications carrier (ETC), 4901:1-6-19, lifeline requirements for ETCs, and 4901:1-6-36, telecommunications relay service of the Administrative Code.
- (C) A provider of interconnected voice over internet protocol-enabled service is exempt from all rules in Chapter 4901:1-6, except for rule 4901:1-6-36 (~~TRS~~) of the Administrative Code.
- (D) A provider of any telecommunications service that is not commercially available as of September 13, 2010 and that employs technology that became available for commercial use only after September 13, 2010, is exempt from the rules set forth in Chapter 4901:1-6 of the Administrative Code.
- (E) The commission may, upon A WAIVER application FILING (WVR) or UPON a motion filed by a PERSON party IN PROCEEDINGS WHERE AN APPLICATION FORM IS REQUIRED, waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.
- (F) Any telephone company seeking a waiver(s) of rules contained in this chapter shall specify the period of time for which it seeks such a waiver(s), and a detailed justification FOR THE WAIVER REQUEST. in the form of a motion filed in accordance with rule 4901-1-12 of the Administrative Code. WAIVER REQUESTS WILL TOLL ANY AUTOMATIC APPROVAL TIME FRAMES SET FORTH IN RULE 4901:1-6-05 OF THE ADMINISTRATIVE CODE.
- (G) UNLESS OTHERWISE PROVIDED IN THIS CHAPTER, INTERESTED PERSONS MAY FILE OBJECTIONS TO THE WAIVER REQUEST, ACCOMPANIED BY A MOTION TO INTERVENE, WITHIN FIFTEEN DAYS AFTER THE WAIVER REQUEST IS FILED. THE PERSON SEEKING THE WAIVER REQUEST MAY RESPOND TO THE OBJECTIONS WITHIN SEVEN DAYS.
- (~~G~~H) All w~~Waiver requests must be~~ ARE NOT DEEMED TO BE GRANTED UNLESS approved by ORDER OF the commission ~~and will toll any automatic approval time frames set forth in rule 4901:1-6-05 of the Administrative Code.~~
- (~~H~~I) Each citation contained within this chapter that is made either to a section of the United States code or a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on September 13, 2010.

4901:1-6-03 Investigation and monitoring.

Nothing contained within this chapter, shall in any way preclude the commission or its staff from:

- (A) Requiring a telephone company to furnish additional information necessary to carry out its authority under Title 49 of the Ohio Revised Code.
- (B) Monitoring a telephone company's compliance with the law or any of the commission's rules and orders.
- (C) Initiating an investigation into a telephone company's compliance with the law or any of the commission's rules and orders.

4901:1-6-04 Application process.**(A) Telecommunications application form**

- (1) For all applications required to be filed under this chapter, a telephone company shall use the most up-to-date telecommunications application form for telephone-related applications and notice filings. This form may change from time to time without further commission entry. COMMISSION Staff will maintain a current, updated copy to provide to applicants. ~~A copy~~ THE MOST RECENT VERSION of the form will be posted on the commission's web site.
- (2) The applicant shall complete the telecommunications application form in its entirety and supply all required attachments and affidavits as outlined on the form.
- (3) The telecommunications application form must be signed by an officer of the applicant, must be notarized, and must identify any agents or employees authorized to make filings on behalf of the applicant before the commission.
- (4) Failure to utilize the current telecommunications application form for any initial filing as well as failure to include the required attachments as outlined on the form may result in immediate dismissal of the application. The commission, the legal director, the deputy legal director, or an attorney examiner has the authority to issue the entry dismissing an application under this rule.
- (5) All amendments, motions, and other supplemental pleadings to an open case under these rules need not use the telecommunications application form, but must clearly state the case number such filings are in reference to.

4901:1-6-05 Automatic approval and notice filing process.

- (A) Many filings pursuant to the rules adopted in this chapter will be handled through an automatic approval process or a notice filing. With the exception of zero-day notices, an automatic time frame will begin on the day after a filing is made with the commission's docketing division. Furthermore, under an automatic approval process, if the commission does not take action before the expiration of the filing's applicable time frame, the filing shall be deemed approved and become effective on the following day, or later date if requested by the company. For example, a filing subject to a thirty-day process will, absent suspension or other commission action, become effective on the thirty-first day after the initial filing is made with the commission.
- (B) A filing subject to the zero-day notice procedure will be effective on the same day the filing is made with the commission. Notice filings are not considered as commission-approved.

4901:1-6-06 Suspensions.

- (A) Unless otherwise provided in law, the commission, legal director, deputy legal director, or attorney examiner may impose a full or partial suspension of any automatic approval process or notice filing herein or tariff approved pursuant to this chapter.
- (B) Under this rule, if a tariff filing is contrary to the rules and regulations of the commission, the commission may require a telephone company to discontinue provision of the affected tariffed telecommunications service(s), or under partial suspension, cease offering the affected tariffed telecommunications service(s) to new customers, or take other actions with regard to the affected service(s) as the commission may require.

- (C) Unless the law specifically precludes suspension of an automatic approval process, a pending application under full or partial suspension will be automatically approved sixty days from the date of suspension if all issues are resolved. If all issues are not resolved by the sixtieth day, the application will be either dismissed by entry or suspended a second time. Any such second suspension shall be accompanied by notice to the applicant explaining the rationale for the additional suspension. Applications under a second suspension cannot be approved without a commission entry or order.
- (1) Under this paragraph, an application under full suspension is entirely precluded from taking effect.
 - (2) Under this paragraph, an application under partial suspension is permitted to take effect, in part or in its entirety, under the proposed terms and conditions, subject to further review by the commission. The applicant is put on notice that the commission, subsequent to further review, may modify the rates and/or terms and conditions of tariffed telecommunications service(s) affected by the application.
- (D) A full or partial suspension of tariffed telecommunications services may also be imposed, after an application has been approved under the automatic approval process or is subject to a zero-day notice filing, if an ex post facto determination is made that the tariff may not be in the public interest, or is in violation of commission rules and regulations.

4901:1-6-07 Content of Customer notice.

- (A) Except for notices for abandonment or withdrawal of service pursuant to rules 4901:1-6-26 and 4901:1-6-25 of the Administrative Code, respectively, and upward alterations of basic local exchange service (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, the commission, and the office of consumers' counsel (OCC) 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.
- (B) For abandonment or withdrawal of service and upward alterations of BLES rates, a telephone company shall provide at least thirty days advance notice to its affected customers. A telephone company shall provide to the commission AND TO THE OCC ~~at the time of the filing of an application, if applicable, or~~ coincident with the notice given to customers, a copy of the actual customer notice and a notarized affidavit verifying that this customer notice was provided to affected customers.
- (C) Every customer notice ~~sent to end-user customers~~ shall identify the name of the company and the company's customer service toll-free telephone number and web site (if one exists), along with a clear description of the impact on the ~~end-user~~ customer. If the notice is informing an ~~end-user~~ customer of a material change in the rates, terms, or conditions of service, the notice shall also name the service offering being changed, a description of the change including any increase in rate(s), the effective date of the change, and the company's contact information.
- (D) Notice shall be provided to affected ~~end-user~~ customers in any reasonable manner, including bill insert, bill message, direct mail, or, if the customer consents, electronic mail.
- (E) For change in operation applications filed pursuant to rule 4901:1-6-29 of the Administrative Code, the customer notice must explain how the customer will be directly impacted by the application and what customer action, if any, is necessary as a result of such application.
- (F) At a minimum, the notice for a withdrawal or abandonment of service should provide the proposed effective date of the service withdrawal, instructions to the customers on how they may obtain

replacement service(s), ~~and~~ the commission's toll-free and TTY-TDD telephone numbers, AND, FOR RESIDENTIAL CONSUMERS, THE OCC'S TOLL-FREE AND TTY-TDD TELEPHONE NUMBERS.

- (G) In the event that the commission staff determines that a notice provided to customers is not consistent with commission rules, the commission staff may require the company to re-notice customers.

4901:1-6-08 Telephone company certification.

- (A) Any telephone company desiring to offer telecommunication services in Ohio shall file an application for certification (ACE) with the commission using the most up-to-date telecommunications application form available from the commission's web site. The form serves to identify the specific types of telecommunication services the applicant wishes to offer, and to verify the applicant's commitment to comply with all applicable commission rules and regulations.
- (B) Paragraph (A) of this rule does not apply to any incumbent local exchange carrier (ILEC) with respect to its geographic service area as that area existed on ~~the effective date of these rules~~ SEPTEMBER 13, 2010. An ILEC or its holding company seeking to operate outside of its geographic service area as that area existed on ~~the effective date of these rules~~ SEPTEMBER 13, 2010 shall file an application for certification.
- (C) Certificate timeline
- (1) Interested ~~PERSONS~~ entities who can show good cause why such application should not be granted must file with the commission a written statement detailing the reasons, as well as a motion to intervene, within fifteen calendar days after the application is docketed. The applicant ~~shall~~ may respond to any motion to intervene ~~within~~ NO LATER THAN seven calendar days after the filing and service of the motion.
 - (2) Absent full or partial suspension, applications seeking certification as a telephone company will be approved in accordance with the thirty-day automatic approval process described in rule 4901:1-6-05 of the Administrative Code.
 - (3) IN ORDER TO FACILITATE INTERVENORS' DISCOVERY RIGHTS UNDER SECTION 4903.082 OF THE REVISED CODE, DISCOVERY SHALL BE SERVED ELECTRONICALLY AND DISCOVERY RESPONSES SHALL BE PROVIDED WITHIN SEVEN CALENDAR DAYS OF SERVICE.
- (D) The commission's docketing division will assign a tariff filing (TRF) docket number, if applicable, and inform the applicant of that number within fourteen days of filing so that the applicant may finalize its tariff and price lists prior to the automatic approval date of the ACE. Failure to file all necessary tariff revisions requested by COMMISSION staff prior to the thirtieth day from initial filing of the ACE application will result in suspension or dismissal of the application. Final tariffs, where applicable, must be filed in the ACE case as well as in the applicant's TRF docket no later than ten days after the automatic approval date.
- (E) Minimum information required to be filed by all applicants seeking certification as a telephone company to operate in the state of Ohio shall include:
- (1) ~~A CC~~ Certificate of good standing and A certificate to operate as an out-of-state entity issued by the Ohio secretary of state and, if applicable, fictitious name authorization.
 - (2) The company's name and address, and if available, e-mail address and web site.

- (3) The name of a contact person and that person's contact information.
 - (4) A general description and list of the types of telecommunications service(s) proposed to be offered and a description of the general geographic area served (maps are not required).
 - (5) Verification that the applicant will follow federal communications commission (~~FCC~~) accounting requirements, if applicable.
 - (6) Documentation attesting to the applicant's satisfactory technical expertise relative to the proposed service offering(s).
 - (7) Documentation indicating the applicant's satisfactory corporate structure, managerial expertise, and ownership.
 - (8) Information pertaining to any similar operations provided by the applicant in other states, INCLUDING BUT NOT LIMITED TO ANY CURRENT STATE OR FEDERAL LITIGATION ALLEGING THAT THE APPLICANT HAS ACTED IN A FRAUDULENT OR DECEPTIVE MANNER TOWARD CUSTOMERS OR HAS OTHERWISE ACTED UNLAWFULLY, AND ANY FINDINGS AGAINST THE APPLICANT BY A STATE OR FEDERAL COURT OR AGENCY THAT THE APPLICANT ACTED IN A FRAUDULENT OR DECEPTIVE MANNER TOWARD CUSTOMERS OR OTHERWISE ACTED UNLAWFULLY.
 - (9) Evidence of notice to the Ohio department of taxation, public utilities tax division, of ~~it's~~ THE APPLICANT'S intent to provide service.
 - (10) Any waivers sought by the applicant, submitted pursuant to rule 4901:1-6-02 of the Administrative Code.
 - (11) Documentation attesting to the applicant's financial viability including, at a minimum, an actual and pro forma income statement and balance sheet.
 - (12) For competitive local exchange carriers (CLECs), a notarized affidavit signed by an authorized employee and accompanied by the bona fide request for interconnection letter sent to the ILEC which verifies that the applicant has entered into negotiations to establish an interconnection and/or transport and termination agreement(s) with, at a minimum, the ILEC(s) serving the geographic area(s) where the applicant will be providing its services. If the agreements(s) have already been filed with the commission for approval, the specific case numbers should be stated. To the extent the agreements have not been filed, the applicant should state the estimated timeframe for such filing. An applicant which intends to provide service to customers by solely reselling the retail services of an underlying facilities-based CLEC is exempt from this requirement. A CLEC shall not start providing service before it files with the commission, for the commission's approval, an interconnection and/or transport and termination agreement with the ILEC and/or a resale agreement with another CLEC as required pursuant to this rule.
- (F) Additional requirements to be submitted by a telephone company seeking to offer basic local exchange service (BLES) or other services required to be tariffed under Chapter 4927 of the Revised Code and rule 4901:1-6-11 of the Administrative Code:
- (1) Proposed ~~end-user~~ CUSTOMER tariffs, including a full description of proposed services and operations as well as all relevant terms and conditions for BLES and other services set forth in rule 4901:1-6-11 of the Administrative Code if offered to retail ~~end-user~~CUSTOMERS. Tariffs may incorporate by reference the exchanges of an ILEC if the applicant is proposing to mirror the ILEC's local service areas in its entirety. If an applicant is a facilities-based CLEC it must provide a carrier-to-carrier tariff, which at a minimum includes an access tariff.

- (2) A list of the ILECs in whose territory the applicant intends to serve. If the applicant is not mirroring AN the entire ILEC'S ENTIRE local service areas, the CLEC shall specifically define ITS ~~their~~ local service areas.
 - (3) Nothing precludes the staff of the commission from requiring additional information consistent with this chapter.
- (G) Scope of operating authority
- (1) The commission shall grant telephone companies providing telecommunication services, statewide operating authority provided the company meets the associated certification requirements.
 - (2) A CLEC shall update its certification if it seeks to expand its operation within its statewide authorization subsequent to certification. To do so, it THE CLEC must file in its TRF case an affidavit signed by an authorized employee verifying that the CLEC has an interconnection and/or transport and termination traffic agreement with the ILEC serving the territory into which the CLEC intends to expand and identifying the specific case numbers in which the agreements were filed, THE CLEC MUST ALSO FILE ~~and update~~ any tariff UPDATE, if applicable.
- (H) The commission may suspend or reject the certification application of a telephone company if it finds, within thirty days after filing and based on the information provided in the application, that the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service to the public consistent with law.
- (I) Suspension or revocation of certificate

Nothing contained within these rules precludes the commission, after reasonable notice and an opportunity to be heard, from suspending, rescinding or conditionally rescinding the certification of a telephone company upon a demonstration that the company has engaged in a pattern of conduct in violation of Ohio law. This includes the failure to comply with the rules and regulations of the commission, including the failure to file the requisite annual reports and the failure to pay all corresponding assessments.

4901:1-6-09 Eligible Telecommunications Carriers (ETCs).

(A) Competitive Eligible Telecommunication Carrier (CETC)

Pursuant to 47 U.S.C. 214(e), upon request and consistent with the public interest, convenience, and necessity, the commission may, upon application, designate a CETC where that applicant meets the requirements of 47 U.S.C. 214, 47 C.F.R 54.201(d), and 47 C.F.R. 54.202. The commission may subject such designation of CETC authority to additional conditions consistent with the public interest, convenience, and necessity.

- (B) In order to be designated a CETC pursuant to 47 USC 214(e), a ~~facilities-based~~ telephone company must:
- (1) File an application with the commission demonstrating its compliance with all federal and state CETC and lifeline requirements pursuant to 47 C.F.R 54.201-209, rule 4901:6-19 of the Administrative Code, where applicable, and this rule.

(A) THE APPLICATION MUST STATE WHETHER THE APPLICANT IS SEEKING ONLY LOW-INCOME SUPPORT, OR LOW-INCOME SUPPORT AND HIGH-COST SUPPORT.

- (B) THE APPLICATION MUST CLEARLY DESCRIBE THE SERVICES TO WHICH THE LIFELINE DISCOUNT WILL APPLY, AND THE RATES THAT LIFELINE CUSTOMERS WILL PAY.
- (C) THE APPLICATION MUST CLEARLY DESCRIBE THE APPLICANT'S FACILITIES. IF THE APPLICANT HAS RECEIVED FORBEARANCE FROM THE FEDERAL COMMUNICATIONS COMMISSION (FCC) FROM THE FACILITIES REQUIREMENT OF 47 U.S.C. 214(E)(1)(A), THE APPLICATION MUST INCLUDE A COPY OF THE RELEVANT FCC ORDER.
- (C) ANY SUBSEQUENT CHANGES TO THE SERVICES TO WHICH THE LIFELINE DISCOUNT WILL APPLY MUST BE ACCOMPANIED BY A FILING WITH THE COMMISSION, AND WILL NOT BE EFFECTIVE UNTIL THE COMMISSION ISSUES AN ORDER APPROVING THE CHANGES.
- (D) THE APPLICATION MUST INCLUDE INFORMATION PERTAINING TO ANY SIMILAR OPERATIONS PROVIDED BY THE APPLICANT IN OTHER STATES, INCLUDING BUT NOT LIMITED TO ANY CURRENT STATE OR FEDERAL LITIGATION ALLEGING THAT THE APPLICANT HAS ACTED IN A FRAUDULENT OR DECEPTIVE MANNER TOWARD CUSTOMERS OR HAS OTHERWISE ACTED UNLAWFULLY, AND ANY FINDINGS AGAINST THE APPLICANT BY A STATE OR FEDERAL COURT OR AGENCY THAT THE APPLICANT ACTED IN A FRAUDULENT OR DECEPTIVE MANNER TOWARD CUSTOMERS OR OTHERWISE ACTED UNLAWFULLY.
- (E) UPON THE FILING OF A CETC APPLICATION, THE COMMISSION SHALL ISSUE AN ENTRY INCLUDING, AT A MINIMUM, DEADLINES FOR INTERVENTION AND COMPLETION OF DISCOVERY, AND A SCHEDULE FOR PUBLIC COMMENT. THE COMMISSION MAY SCHEDULE A PUBLIC HEARING ON A CETC APPLICATION.

- (2) Telephone companies not previously designated as a CETC and requesting CETC authority, shall file the application for CETC designation with the commission using the most up-to-date CETC application form and must include all required exhibits listed on the application form. Commission staff will maintain a current, updated copy of the CETC application form. A copy of this form will be posted on the commission's website. An application for ETC designation (~~TP-UNC~~) shall not be subject to an automatic approval process. Rather, a CETC designation can ~~only~~ be granted ONLY by a commission order approving such request.

(C) ETC Reporting Requirements

In order to be eligible for federal Universal Service Funding in any given year, ALL ETCS (I.E., an incumbent local exchange carrier (ILEC)-ETCS and a CETCS) (~~collectively, "ETC"~~) must comply with the following annual reporting requirements.

- (1) No later than August 31 of each year, an ETC receiving high cost funding must file an affidavit with the ~~Commission~~ stating that all federal high-cost support provided to the carrier for service areas in Ohio will be used only for the provision, maintenance, and upgrading of facilities and services for which the support was intended pursuant to 47 U.S.C 254(e).
- (2) No later than August 31 of each year, or a date otherwise designated by the Universal Service Administration Company (USAC), an ETC receiving lifeline support must file a completed copy of the ~~federal communications commission (FCC'S)~~ Annual Lifeline Certification and Verification affidavit, that is submitted to USAC, with the commission.

(D) Revocation or Relinquishment of ETC Designation

- (1) The commission may revoke, consistent with FCC rules and regulations, an ETC designation if it finds that the company has failed to comply with any state or federal ETC requirements, including the failure to pay all corresponding assessments.
- (2) An ETC may seek to relinquish its ETC designation for an area pursuant to 47 CFR 54.205 through the filing of a non-automatic application with the commission. An ETC will not be relieved of its ETC designation until the commission issues an order granting the request.

4901:1-6-10 Competitive emergency services telecommunications carrier (CESTC) certification.

- (A) An applicant seeking CESTC authority in the state of Ohio, must submit an application for certification (ACE) application with the items set forth in paragraph (E) of rule 4901:1-6-08 of the Administrative Code and any additional items requested by ~~C~~ommission staff. A competitive local exchange carrier (CLEC), or an incumbent local exchange carrier (ILEC) operating outside of its traditional service area, seeking to offer CESTC service, subsequent to initial certification, shall file a 30-day ACE application seeking CESTC authority with a proposed CESTC tariff and any additional items requested by ~~C~~ommission staff.
- (B) Certificate timeline
 - (1) Interested entities who can show good cause why such application should not be granted must file with the commission a written statement detailing the reasons, as well as a motion to intervene, within fifteen calendar days after the application is docketed. The applicant shall respond to any motion to intervene within seven calendar days after the filing and service of the motion.
 - (2) Absent full or partial suspension, applications seeking certification as a telephone company will be approved in accordance with the thirty-day automatic approval process described in rule 4901:1-6-05 of the Administrative Code.
- (C) A CESTC may not operate as a 9-1-1 system service provider until such time as the county has amended its 9-1-1 plan to identify that carrier as the 9-1-1 carrier of choice for a public safety answering point (PSAP)(s) serving ~~end user~~CUSTOMERS in that county for the designated telecommunications traffic.
- (D) A CESTC authorized to act as a 9-1-1 system service provider to a PSAP must carry all calls for that PSAP for those services designated to it by the PSAP. In addition to the ILEC, there may be no more than one CESTC designated by the PSAP as set forth in the approved county plan.
- (E) Once the county plan has been amended, a CESTC shall update its tariff to reflect the PSAP(s) served by the CESTC and which type of telecommunications traffic will be provided to that PSAP. Contracts between a CESTC and all individual counties for the provision of emergency service to a PSAP(s) within that county shall be submitted to the state of Ohio's 9-1-1 coordinator.
- (F) A CESTC shall interconnect with each PSAP in a county and adjacent 9-1-1 systems across county lines to ensure transferability of all 9-1-1/E9-1-1 calls.
- (G) The commission shall grant a CESTC, statewide operating authority provided the company meets the associated certification requirements. As a CESTC seeks to expand its operation within its statewide authorization, it must update its tariff by filing, in its TRF case, an up-to-date list of the counties in which the CESTC is actually provisioning service.

4901:1-6-11 Tariffed Services.**(A) Services required to be tariffed**

- (1) The rates, terms, and conditions for 9-1-1 service provided in this state by a telephone company or a telecommunications carrier, and each of the following provided by a telephone company shall be approved and tariffed by the commission and shall be subject to all the applicable laws, including rules or regulations adopted and orders issued by the commission or the federal communications commission (~~FCC~~) and, including, as to 9-1-1 service, sections 4931.40 to 4931.70 and 4931.99 of the Revised Code:

(a) basic local exchange service (BLES);

(B) INSTALLATION AND RECONNECTION FEES;

(C) LIFELINE SERVICE;

(~~b~~D) carrier access;

(~~e~~E) N-1-1 service;

(~~d~~F) pole attachments and conduit occupancy under section 4905.71 of the Revised Code;

(~~e~~G) pay telephone access lines;

(~~f~~H) toll presubscription;

(~~g~~I) excess construction charges;

(~~h~~J) alternative and inmate operator services; and

(~~h~~K) telecommunications relay service.

- (2) All other telecommunications services offered by a telephone company shall not be included in tariffs filed with the commission, but shall still be subject to commission oversight and regulation as provided in Chapter 4927 of the Revised Code and Chapter 4901:1-6 of the Administrative Code.

(B) Tariffing requirements. ALL TARIFFS FOR SERVICES REQUIRED TO BE TARIFFED UNDER PARAGRAPH (A) OF THIS RULE SHALL INCLUDE BOTH THE APPROPRIATE DATE ISSUED (THE DATE THE TARIFF WAS FILED WITH THE COMMISSION) AND EFFECTIVE DATE (THE DATE THE SERVICE(S) WILL BE OFFERED). ALL TARIFFS SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING ELEMENTS:

- (1) — ~~All tariffs for services required to be tariffed under paragraph (A) of this rule, shall include both the appropriate issued (the date the tariff was filed with the commission) and effective (the date the service(s) will be offered) dates. All tariffs shall include, at a minimum, the following elements:~~

(~~a~~1) A title page and a table of contents.

(~~b~~2) A description of all services offered along with all terms and conditions associated with the provision of each service.

- ~~(c) A description of the actual basic local exchange (BLES) local service area in which an end user may complete a call without incurring a toll charge. Any change to a local service area must be reflected in the tariff on file with the commission.~~
- (d3) A complete list of rates, relative to the provision of each service.
- ~~(e) A statement informing customers that all telephone companies offering BLES are subject to the commission's service requirements for BLES found in rule 4901:1-6-12 of the Administrative Code.~~
- (f4) For tariffs filed requiring prior commission approval, each final tariff sheet must exhibit the commission authority by designating the case number in which the tariff was approved, the automatic date of effectiveness or commission order date, the effective date of the tariff sheet, the name of the telephone company, and the name of an officer of the telephone company. This information should be included in a header, a footer, or a combination thereof.
- (g5) For tariffs filed pursuant to a zero-day notice filing, each final tariff sheet should include the effective date of the tariff sheet, the name of the telephone company, and the name of an officer of the telephone company. This information should be included in a header, a footer, or a combination thereof.
- (6) FOR BLES, A DESCRIPTION OF THE ACTUAL BLES LOCAL SERVICE AREA IN WHICH A CUSTOMER MAY COMPLETE A CALL WITHOUT INCURRING A TOLL CHARGE. ANY CHANGE TO A LOCAL SERVICE AREA MUST BE REFLECTED IN THE TARIFF ON FILE WITH THE COMMISSION.
- (e7) FOR BLES, A STATEMENT INFORMING CUSTOMERS THAT ALL TELEPHONE COMPANIES OFFERING BLES ARE SUBJECT TO THE COMMISSION'S SERVICE REQUIREMENTS FOR BLES FOUND IN RULE 4901:1-6-12 OF THE ADMINISTRATIVE CODE.

(C) Tariff filing (TRF) docket

- (1) The commission shall maintain and designate for each telephone company offering tariffed telecommunications services a TRF docket for the filing of final tariffs and filings subject to a zero-day notice procedure.
- (2) The docketing division will assign a TRF docket number when a telephone company seeks to obtain initial certification.
- (3) For applications in which new or revised tariff pages are involved, such tariff page(s) shall be filed in final form in the TRF and the appropriate application purpose code, where applicable. For filings subject to a zero-day notice procedure, such notice shall include an application form, description of filing request, final tariff pages, and, if applicable, a customer notice. For non-automatic applications and those applications subject to an automatic approval process (other than the zero-day notice process), final tariff pages must be filed within ten calendar days after the approval date. The effective date on the tariffs shall be a date no sooner than the date the final tariffs are filed with the commission.

(A) A local exchange carrier (LEC) providing basic local exchange service (BLES) shall conduct its operations so as to ensure that the service is available, adequate, and reliable consistent with applicable industry standards.

~~(B) The fact that a LEC providing BLES fails to comply with any provision(s) within this chapter, or with other applicable federal or state telecommunications law, does not by itself constitute inadequate service as a matter of law. Rather, the question as to whether BLES is legally inadequate requires a formal determination by the commission, preceded by a hearing pursuant to section 4927.21 of the Revised Code, unless the hearing is waived by the complainant and the respondent.~~

~~(C)~~ A LEC shall provide BLES pursuant to the following standards:

(1) BLES shall be installed within five business days of the receipt by a telephone company of a completed application for new access line service, unless the customer requests or agrees to a later date.

~~(2) The requirement to install BLES in paragraph (C)(1) of this rule is not applicable where any of the following exist:~~

~~(a) A customer or applicant has not met pertinent tariff requirements.~~

~~(b) The need for special equipment or service.~~

~~(c) Military action, war, insurrection, riot, or strike.~~

~~(d) The customer misses an installation appointment.~~

(32) A LEC shall make reasonable efforts to repair a BLES outage within twenty-four hours, excluding Sundays and legal holidays, after the outage is reported to the telephone company.

(43) A BLES service outage or service-affecting problem shall be repaired within seventy-two hours after it is reported to the telephone company.

(54) If a BLES outage is reported to the telephone company and lasts more than seventy-two hours, the LEC shall credit every affected customer, of which the LEC is aware, in the amount of one month's charges for BLES.

(65) The IF THE OUTAGE IS CAUSED BY A customer, THE LEC MAY ELECT NOT TO PROVIDE THE credit in paragraph (C)(54) of this rule TO THAT CUSTOMER. ~~is not applicable if the condition or failure to repair occurs as a result of any of the following:~~

~~(a) A customer's negligent or willful act.~~

~~—— (b) Malfunction of customer-owned telephone equipment or inside wire.~~

~~—— (c) Military action, war, insurrection, riot, or strike.~~

~~—— (d) Customer missing a repair appointment.~~

(76) No LEC shall establish a due date FOR PAYMENT earlier than fourteen consecutive days after the date the bill is postmarked for a bill for BLES provided to end users CUSTOMERS. ~~The postmark date may appear on the bill rather than on the envelope, as long as the postmark date is never earlier than the date the bill actually enters the mail.~~

(87) A LEC may disconnect BLES for non-payment of any amount past due on a billed account not earlier than fourteen days after the due date of the customer's bill, provided that the customer is given notice of the disconnection seven days before the disconnection.

~~(9) No customer notice is required prior to the disconnection described in paragraph (C)(8) of this rule for any of the following reasons:~~

~~(a) Tampering with telecommunications property of the LEC.~~

~~(b) A use or misuse of telephone service or equipment which adversely affects telephone service to other customers.~~

~~(c) In order to eliminate, mitigate, or avoid a safety hazard to customers or their premises, to the public, or to the LEC's personnel or facilities.~~

(108) Such notice of disconnection may be included on the customer's next bill, provided the bill is postmarked at least seven days prior to the date of disconnection of service reflected on the bill, and provided that the disconnection language is clearly highlighted such that it stands apart from the customer's regular bill language. The notice shall identify the minimum dollar amount to be paid to maintain BLES, the earliest date disconnection may occur, and the following statement:

"If you have a complaint in regard to this disconnection notice that cannot be resolved after you have called (name of the utility), or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.puco.ohio.gov."

For residential disconnection notices, the text shall also include:

"Residential customers may also contact the Ohio Consumers' Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.pickocc.org."

(119) A LEC may require a deposit, not to exceed two hundred thirty percent of a reasonable estimate of one month's service charges, for the installation of BLES for any person that it determines, in its discretion, is not creditworthy.

(1210) A LEC shall, unless prevented from doing so by circumstances beyond the telephone company's control or unless the customer requests otherwise, reconnect a customer whose basic local exchange service was disconnected for nonpayment of past due charges not later than one business day after the day the earlier of the following occurs:

(a) The receipt by the LEC of the full amount of past due charges;

(b) The receipt by the LEC of the first payment under a mutually agreed upon payment arrangement.

4901:1-6-13 Warm line service

Every telephone company providing telephone exchange service shall maintain access to 9-1-1 service on a residential customer's line for a minimum of fourteen consecutive days immediately following any disconnection for nonpayment of a customer's telephone exchange service.

4901:1-6-14 BLES Pricing Parameters.

- (A) Rates for basic local exchange service (BLES) offered by a LOCAL EXCHANGE ~~telephone~~ company (LEC) shall be subject to the tariff requirements and pricing constraints set forth in this rule.
- (B) BLES regulatory framework
- (1) BLES shall only be offered by LECs ~~telephone companies~~ pursuant to approved tariffs on file with the commission. A LEC ~~telephone company~~ offering BLES shall maintain a complete, up-to-date tariff on file at the offices of the commission at all times.
 - (2) The tariff for BLES shall contain all rates, terms, and conditions for BLES and installation and reconnection fees for BLES.
 - (3) The BLES pricing flexibility set forth in this rule is ~~only~~ applicable ONLY to the network access line component or equivalent of a ~~primary~~ SINGLE BLES line.
 - (4) BLES which is not part of a bundle or package of services is considered BLES for purposes of these rules regardless of what other ala carte services and features TO WHICH a customer may subscribe.
 - (5) BLES which is part of a bundle or package of services is not subject to the pricing constraints contained in paragraph (C) of this rule and Section 4927.12 of the Revised Code ~~and may be priced at market-based rates.~~
 - (6) An incumbent local exchange carrier (ILEC) offering BLES outside of its traditional service area or a competitive local exchange carrier (CLEC) affiliate of an ILEC offering BLES within or outside of that ILEC's traditional service area shall follow all BLES rules in this chapter that are applicable to CLECs offering BLES.
- (C) For-Profit ILEC BLES pricing flexibility
- (1) Subject to paragraph (C) of this rule and upon not less than thirty days' notice to the commission, pursuant to paragraph (F)(5) of this rule, the office of the consumers' counsel (OCC), and to affected customers, a for-profit ILEC may alter its rates for BLES:
 - (a) If the ILEC, within twelve months prior to September 13, 2010, increased the ILECs' rates for BLES for the exchange area, both of the following apply:
 - (1) The ILEC may not alter its rates for BLES for the exchange area upward by any amount during the period that ends twelve months after the date of the last increase of the rates for BLES.
 - (2) In no event may the ILEC during the twelve-month period that begins immediately after the end date of the period described in (C)(1)(a)(1) of this rule, and during any subsequent twelve-month period, alter the ILEC's rates for BLES upward for an exchange area by more than an annual increase of \$1.25.
 - (b) If the ILEC did not, within twelve months prior to September 13, 2010, increase the ILEC's rates for BLES for an exchange area, and if the commission has made a prior determination that the exchange area qualified for alternative regulation of BLES under Chapter 4901:1-4 of

the Administrative Code, as that chapter existed on September 13, 2010, in no event may the ILEC, during the twelve-month period that begins on September 13, 2010, and during any subsequent twelve-month period, alter the ILEC's rates for BLES upward for the exchange area by more than an annual increase of \$1.25.

- (c) If the commission has not made a prior determination that the exchange area qualified for alternative regulation of BLES under Chapter 4901:1-4, of the Administrative Code, as that chapter existed on September 13, 2010, an ILEC may not alter its rates for BLES upward for that exchange area unless the ILEC first applies to the commission and the commission determines that the application demonstrates that two or more alternative providers offer, in the exchange area, competing service to the BLES offered by an ILEC in the exchange area, regardless of the technology and facilities used by the alternative provider, the alternative provider's location, and the extent of the alternative provider's service area within the exchange area. ~~An alternative provider includes a telephone company, including a wireless service provider, a telecommunications carrier, and a provider of internet protocol-enabled services, including voice over internet protocol.~~

- (1) Upon the filing of an application under paragraph (C)(1)(c) of this rule pursuant to a "BLS" case purpose code, the commission shall be deemed to have found that the application meets the requirements of that paragraph unless the commission, within thirty days after the filing of an application, issues an order finding that the requirements have not been met.
- (2) In no event may an ILEC that applies to the commission under paragraph (C)(1)(c) of this rule, during the twelve-month period that begins on the thirty-first day after the company files the application, and during any subsequent twelve-month period, alter the carrier's rate for BLES upward for the exchange area to which the application applies by more than an annual increase of \$1.25.

(2) Banking

Any rate increase allowed by this rule that is not used during a twelve-month period by a for-profit ILEC may not be used in any subsequent year.

(D) Not-for-Profit ILECs pricing flexibility

At any time, and upon no less than thirty days' notice to the commission, pursuant to paragraph (F)(5) of this rule, ~~the office of the OCC,~~ and to affected customers, a not-for-profit mutual ILEC may alter its rates for BLES by any amount.

- (E) In no event may an ILEC, before January 1, 2012, alter its rates for BLES upward for a customer receiving lifeline service.

(F) ILEC BLES application, process, and notice

- (1) If the commission has not made a prior determination that the exchange area qualified for alternative regulation of BLES under Chapter 4901:1-4 of the Administrative Code, as that chapter existed on September 13, 2010, a for-profit ILEC must file a "BLS" application seeking approval to obtain BLES pricing flexibility as set forth in paragraph (C)(1)(c)(1) of this rule.
- (2) A for-profit ILEC shall establish or maintain a tariffed cap for BLES consistent with paragraphs (C)(1)(a)(2), (C)(1)(b), and (C)(1)(c)(2) of this rule. Such ILECs shall file annual changes to its tariffed cap for BLES, in those exchange areas with BLES pricing flexibility, as a zero-day tariff amendment (ZTA).

- (3) A for-profit ILEC's BLES price change(s) below its annual tariffed cap for BLES is subject to a zero-day notice-only filing under the company's tariff filing (TRF) docket.
 - (4) A not-for-profit ILEC's BLES rates may be established and changed in its tariff pursuant to a zero-day notice filing under the company's tariff filing (TRF) docket.
 - (5) Increases in an ILEC's BLES rates pursuant to paragraphs (C) and (D) of this rule require customer notice in accordance with rule 4901:1-6-07 of the Administrative Code. A copy of the applicable customer notice must be provided to commission staff no later than the date it is provided to customers by emailing the text of the customer notice to a commission-provided electronic mailbox at: Telecomm-Rule07@puc.state.oh.us. A COPY OF THE APPLICABLE CUSTOMER NOTICE MUST ALSO BE PROVIDED TO THE OCC.
- (G) CLEC BLES pricing flexibility, process, and notice:
- (1) CLECs may establish the tariffed rate(s) for any BLES offerings based on the marketplace.
 - (2) A CLEC's BLES rate change(s) is subject to a zero-day notice-only filing under the company's tariff filing (TRF) docket.
 - (3) A CLEC may increase its BLES rates on no less than thirty days' written notice to affected customers and THE OCC. Such increases require customer notice consistent with the requirements of rule 4901:1-6-07 of the Administrative Code. A copy of the applicable customer notice must be provided to commission staff no later than the date it is provided to customers by emailing the text of the customer notice to a commission-provided electronic mailbox at: Telecomm-Rule07@puc.state.oh.us.
- (H) New services, change in terms and conditions and expansion of local service area
- (1) In order to introduce BLES or for an expansion of a local service area, a LEC must docket a zero-day tariff application (ZTA) with the commission, in accordance with the application process rule 4901:1-6-04 of the Administrative Code. ~~The ZTA will be subject to the approval time frames found in rule 4901:1-6-05 of the Administrative Code.~~
 - (2) Material changes in terms and conditions of an existing BLES by a LEC, including the introduction of a nonrecurring service charge, surcharge or fee to BLES by a CLEC, shall be filed through a thirty-day application for tariff amendment (ATA) filing. A standard of reasonableness will be applied to these charges including, but not limited to, a comparison with similar charges previously approved by the commission and similar charges assessed by other providers. Such application requires a customer notice to be filed in accordance with rule 4901:1-6-07 of the Administrative Code.
- (I) BLES Late payment charges
- Late payment charges for BLES may be introduced or increased through a thirty-day ATA filing. A standard of reasonableness will be applied to late payment charges including, but not limited to, a comparison with similar charges previously approved by the commission and similar charges assessed by nonregulated providers. Such application requires a customer notice to be filed in accordance with rule 4901:1-6-07 of the Administrative Code.
- (J) BLES Installation and reconnection fees
- Any ILEC nonrecurring service charges for installation and reconnection of BLES will continue to be capped at the tariffed rates for such charges associated with a primary BLES line currently in existence as of September 13, 2010.

4901:1-6-15 Directory information.

- (A) A ~~LE~~local exchange carrier (LEC) providing basic local exchange service (BLES) shall make available to its customers at no additional charge a telephone directory in any reasonable format, including but not limited to a printed directory, an electronic directory accessible on the internet or available on a computer disc, or free directory assistance. The telephone directory shall include all published telephone numbers in current use within the ~~LEC's~~ ~~LE~~EC local calling area, including numbers for an emergency such as 9-1-1, the local police, the state highway patrol, the county sheriff and fire departments, the Ohio relay service, operator service, and directory assistance.
- (B) A LEC providing BLES shall offer BLES customers the option to have a printed directory at no additional charge. In lieu of automatically delivering printed residential white pages directories, a LEC providing BLES may provide a toll-free telephone number for customers to request a free printed residential white pages directory ~~AND or~~ make available directories FOR CUSTOMER PICK-UP in places frequented by the public, such as grocery stores, pharmacies, or banks.
- (C) A LEC providing BLES shall also provide its customers with a FREE listing in that directory, with reasonable accommodations made for private listings.

4901:1-6-16 Unfair or Deceptive Acts and Practices.

- (A) Telephone companies shall not commit any unfair or deceptive act or practice in connection with the offering or provision of any telecommunications service in this state.
- (B) A failure to comply with any of the following requirements shall constitute an unfair or deceptive act or practice by a telephone company:
 - (1) Any communication by a telephone company, including but not limited, to solicitations, offers, contract terms and conditions or customer agreements, as well as any other communications whether written or oral, shall be TRUTHFUL, CLEAR, CONSPICUOUS, AND ACCURATE IN:
 - (a) ~~Clear, conspicuous, and accurate in d~~disclosing applicable information, including but not limited to: material terms and conditions, contract length, prices, fees, features, rates, termination fees or penalties, discretionary charges, government mandated charges, and estimated taxes for services offered;:-
 - (b) ~~Clear in i~~dentifying any material exclusions, reservations, limitations, modifications, or conditions which must be located in close proximity to the operative words in the solicitation, offer, or marketing materials;:- AND
 - (c) ~~Truthful, not misleading, and clear in i~~dentifying all material limitations, including claims that are not bona fide offers.
 - (2) Telephone companies shall disclose the company's name and contact information on any written service solicitation, marketing material, offer, contracts, or agreement, as well as on any written response to a service-related inquiry or complaint the company receives from a customer or others.
 - (3) Local exchange carriers (LECs) shall inform customers calling the company to report a service outage or service problem of their rights and responsibilities concerning the repair and maintenance of customer-owned equipment, inside wire, and the use of a network interface device (NID) to test

for service problems. During such call the LEC must notify the customer of any charges that the company imposes for a diagnostic visit.

- (4) In the event a NID is not in place, the LEC shall inform a customer calling to report a service outage or service problem that the LEC is required to visit the customer premise at no charge to diagnose whether service difficulties exist with network wire or inside wire.
 - (5) As applicable, and in any reasonable manner, a LEC shall provide customers a description of the NID. That description shall include: all customer options for repairing inside wire; the function and probable location of a NID; and an explanation as to how to use a NID to test for service problems. The explanation shall also detail the customer's rights and responsibilities concerning NID installation if a NID is not present on the premise and the customer's responsibility to utilize a NID to diagnose service problems or risk a service fee.
- (C) Nothing in this rule precludes the Commission from finding additional acts or practices, in addition to those identified in paragraph (B) above, to constitute an unfair or deceptive act or practice in connection with the offering or provision of telecommunications service in this state either through ~~another~~ rulemaking under section 4927.03 of the Revised Code or through an adjudication under section 4927.21 of the Revised Code. THE COMMISSION SHALL PROVIDE NOTICE TO ALL TELEPHONE COMPANIES OF SUCH ADJUDICATIONS. No telephone company is liable for damages or forfeitures for engaging in any act, practice, or omission for which it does not have prior notice either under paragraph (B) of this rule, or through ~~another~~ rulemaking under section 4927.03 of the Revised Code, or an adjudication under section 4927.21 of the Revised Code, that engaging in such act or practice is an unfair or deceptive act. This does not preclude the commission, however, from ordering an appropriate customer credit or remedy for a complainant in the context of an adjudication of an individual complaint, if the commission determines that the company has committed an unfair or deceptive act or practice against that complainant. In the absence of prior notice that an act or practice is unfair or deceptive under paragraph (B) of this rule, or through another rulemaking under section 4927.03 of the Revised Code, or an adjudication under section 4927.21 of the Revised Code, the commission shall allow the company adequate time to implement any procedures or practices the commission determines appropriate to remedy the violation.
- (D) ~~A telephone company~~ Telephone companies shall make available, in any reasonable format, to any applicant or customer, upon request, at no charge, a copy of its credit and deposit policies.
- (E) Telephone companies in possession of customer proprietary network information shall protect customer information in accordance with 47 U.S.C. 222 and in accordance with the rules and procedures prescribed by the federal communications commission at 47 C.F.R. 64.2001 to 64.2011.
- (F) Telephone companies that furnish credit information acquired from their own experiences with customers to consumer reporting agencies must comply with the same requirements that consumer reporting agencies follow when issuing credit reports, within the meaning of the federal Fair Credit Reporting Act.

4901:1-6-17 Truth in Billing Requirements.

- (A) Every telephone company shall comply with the federal communications commission's ~~(FCC)'s~~ truth in billing requirements in 47 C.F.R. 64.201 and shall, in conformance with those requirements, accurately identify on every bill all services rendered, the providers of those services, and all billed charges, fees, and taxes so that they are clear and not misleading.
- (B) Every customer's bill shall include a statement that customers with bill questions or complaints should contact the telephone company first, as well as the following text:

"If your complaint is not resolved after you have called (name of the utility), or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio for assistance at 1-800-686-7826 (toll free) or for TTY at 1-800-686-1570 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.puco.ohio.gov."

For residential bills the text shall also include:

"Residential customers may also contact the Ohio Consumers' Counsel for assistance with complaints and utility issues at 1-877-742-5622 (toll free) from 8:00 a.m. to 5:00 p.m. weekdays, or at www.pickocc.org."

4901:1-6-18 Slamming and preferred carrier freezes.

- (A) Providers of telecommunications service, in the course of submitting or executing a change on behalf of a subscriber in the selection of a telephone company, shall obtain authorization from the subscriber and verification of that authorization in accordance with the rules and procedures prescribed by the federal communication commission (FCC) at 47 C.F.R. 64.1100 to 64.1170. For purposes of this rule, the term "subscriber" has the same meaning as it does within the context of the rules and procedures prescribed by the FCC.
- (B) The submitting provider of telecommunications service shall maintain and preserve records of verification of a subscriber's authorized switch of provider of telecommunications service in accordance with the rules and procedures prescribed by the FCC.
- (C) Any provider of telecommunications service that is informed by a subscriber or the commission of an unauthorized provider change shall follow the commission's informal complaint procedures and the remedies prescribed by the FCC for the resolution of informal complaints of unauthorized changes of providers of telecommunications service.
- (D) The commission, upon complaint by any person or its own initiative, has jurisdiction under sections 4905.73, ~~and 4905.26, AND 4927.21~~ of the Revised Code, concerning any violation of this rule and may order remedies as delineated under the rules and procedures prescribed by the FCC and in effect at the time of the violation, as well as enforce the duties and remedies provided for under sections 4905.72 and 4905.73 of the Revised Code.
- (E) A provider of telecommunications service shall ~~only~~ offer a preferred carrier freeze (PCF); ONLY in accordance with the rules and procedures prescribed by the FCC.
- (F) All telecommunications providers that offer PCFs shall be required to refrain from attempting to retain a customer's account during the process of changing a customer's preferred carrier selection, or otherwise to provide such information to its marketing staff or any affiliate.

4901:1-46-19 Lifeline Requirements.

- (A) An incumbent local exchange carrier (ILEC) that is an eligible telecommunications carrier (ETC) (~~ILEC ETC~~) under 47 C.F.R. 54.201 shall implement lifeline service throughout the ILEC ETC's traditional service area for its eligible residential customers.
- (B) Lifeline service shall be a flat-rate, monthly, primary access line service with touch-tone service and shall provide all of the following:

- (1) A recurring discount to the monthly basic local exchange service rate that provides for the maximum contribution of federally available assistance.
 - (2) ~~Not more than once per customer at a single address in a twelve-month period.~~ A waiver of all nonrecurring service order charges for establishing service, AVAILABLE ONCE EVERY TWELVE MONTHS PER CUSTOMER.
 - (3) Free blocking of toll service, 900 service, and 976 service.
 - (4) A waiver of the federal universal service fund end user charge.
 - (5) A waiver of the telephone company's service deposit requirement.
- (C) The ILEC ETC may offer to lifeline service customers any other services and bundles or packages of service at the prevailing prices, less the lifeline discount.
- (D) The ILEC ETC also shall offer special payment arrangements to lifeline service customers that have past due bills for regulated local service charges, with the initial payment not to exceed twenty-five dollars before service is installed, and the balance for regulated local service charges to be paid over six, equal monthly payments. Lifeline service customers with past due bills for toll service charges shall have toll restricted service until the past due toll service charges have been paid or until the customer establishes service with another toll provider.
- (E) Every large ILEC required to implement lifeline service shall establish an annual marketing budget for promoting lifeline service and performing outreach regarding lifeline service. Every large ILEC shall work with the advisory board ESTABLISHED IN PARAGRAPH (F) to reach consensus, where possible, regarding an appropriate budget for promoting lifeline and performing outreach and regarding how the budget will be spent. All funds allocated to this budget shall be spent for the promotion and marketing of lifeline service and outreach regarding lifeline service and only for those purposes and not for any administrative costs of implementing lifeline service.
- (F) All activities relating to the promotion of, marketing of, and outreach regarding lifeline service provided by the large ILECs shall be coordinated through a single advisory board composed of staff of the public utilities commission, the office of the consumers' counsel (OCC), consumer groups representing low income constituents, two representatives from the Ohio association of community action agencies, and every large ILEC. The commission staff shall provide active leadership in the initial organization of the statewide board and the development of procedures and bylaws under which the board will operate. Commission staff shall, with the assistance of the office of the consumers' counsel, work with the advisory board to reach consensus on the organization of the board and all activities relating to the promotion of, marketing of, and outreach regarding lifeline service. However, where consensus is not possible, the commission's staff shall make the final determination. DECISIONS ON THE ORGANIZATION OF THE BOARD AND ~~The commission may review and approve decisions of the advisory board including decisions on how the lifeline marketing, promotion, and outreach activities are implemented~~ ARE SUBJECT TO COMMISSION REVIEW.
- (G) All other aspects of an ILEC ETC's state-specific lifeline service shall be consistent with federal requirements. The rates, terms, and conditions for the ILEC's lifeline service shall be tarified in accordance with rule 4901:1-6-11 OF THE ADMINISTRATIVE CODE.
- (H) Eligibility for lifeline service under this rule shall be based on either of the following criteria :
- (1) An individual's verifiable participation in any federal or state low-income assistance program that limits assistance based on household income. These programs include:

- (a) Medical Assistance under Chapter 5111 of the Ohio Revised Code (Medicaid) or any state program that might supplant Medicaid;
- (b) Supplemental Nutritional Assistance Program (SNAP/Food Stamps);
- (c) Supplemental Security Income (SSI) under Title XVI of the Social Security Act;
- (d) ~~Supplemental~~ SOCIAL Security ~~Disabled Income~~ DISABILITY INSURANCE - blind and disabled (SSDI);
- (e) Federal public housing assistance, or Section 8;
- (f) Home Energy Assistance Programs (HEAP, LIHEAP, E-HEAP);
- (g) National School Lunch Program's Free Lunch Program (NSL);
- (h) Temporary Assistance for Needy Families (TANF/Ohio Works); or
- (i) General Assistance, including disability assistance (DA).

The commission may add or remove programs from this list as required by federal or state law.

- (2) Other verification that an individual's household income is at or below one hundred fifty per cent of the federal poverty level. ILEC ETC's may use any reasonable method of verification. Consistent with federal law, examples of acceptable documentation include the following:
 - (a) State or federal income tax return;
 - (b) Current income statement or W-2 from an employer;
 - (c) Three consecutive months of current pay stubs;
 - (d) Social Security statement of benefits;
 - (e) Retirement/Pension statement of benefits;
 - (f) Unemployment/Workmen's Compensation statement of benefits;
 - (g) Any other legal document that would show current income (such as a divorce decree or child support document).
- (I) All ILEC ETCs must verify customer eligibility consistent with the federal communication commission's (FCC) requirements in 47 C.F.R. 54, to enroll customers into lifeline assistance who qualify through household income-based requirements.
- (J) The commission shall work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to negotiate and acquire information necessary to verify an individual's eligibility and the data necessary to automatically enroll eligible persons for lifeline service.
- (K) To the extent that appropriate state agencies are able to accommodate automatic enrollment, every ILEC ETC shall automatically enroll customers into lifeline assistance who participate in a qualifying program.

- (L) An ILEC ETC shall provide written notification if the carrier determines that an individual is not eligible for lifeline service enrollment and shall provide the person an additional thirty days to prove eligibility.
- (M) An ILEC ETC shall provide written customer notification if a customer's lifeline service benefits are to be terminated due to failure to submit acceptable documentation for continued eligibility for that assistance and shall provide the customer an additional sixty days to submit acceptable documentation of continued eligibility or dispute the carrier's findings regarding termination of the lifeline service.
- (N) Commission staff will maintain on the commission's website a copy of boilerplate customer notices that are compliant with the FCC's requirements. Any ILEC ETC choosing to create and use its own customer notice shall submit its proposed notice to commission staff for approval. WHEN THE NOTICE IS SUBMITTED TO COMMISSION STAFF FOR APPROVAL, A COPY SHALL BE PROVIDED TO THE OCC.
- (O) An ILEC ETC shall establish procedures to verify an individual's continuing eligibility for both program and income-based criteria consistent with the FCC's requirements in 47 C.F.R. 54.409 - 54.410. ILEC ETCs shall maintain records to document compliance with these requirements and shall attest, as part of the periodic ETC certification process by the commission, that they comply with the FCC's requirements.
- (P) An ILEC ETC may recover through a customer billing surcharge on ~~end-user~~CUSTOMERs of the ILEC's telecommunications service, other than lifeline service customers, any lifeline service discounts and any other lifeline service expenses that are not recovered through federal or state funding and that are approved by the commission under THIS paragraphs (P)(1) or (P)(2) of this rule. The surcharge may not include recovery of expenses related to the marketing and promotion of lifeline service. ~~The surcharge may be established through one of the following means:~~
 - (1) ~~An ILEC ETC that chooses to establish a customer billing surcharge to non-lifeline customers, to recover lifeline service discounts and expenses identified in this paragraph shall file a thirty-day AN application for tariff amendment (ATA). Such application may request recovery of lifeline service discounts that are not recovered through federal or state funding, LIMITED TO such as federal universal service fund end-user charges, service connection charges, blocking of 900/976, and recurring discount maximizing the contribution of federally available assistance, and recurring retail price differences between the frozen lifeline service rate and residential BLES rates, as well as lifeline service expenses that are not recovered through federal or state funding, LIMITED TO such as administrative expenses for the sole purpose of verifying the eligibility and enrolling of lifeline customers. An applicant must provide documentation to support its proposed surcharge and its compliance with this rule. THE COMMISSION MAY SUSPEND ANY APPLICATION, AND MAY ORDER A PUBLIC HEARING IF NECESSARY. Absent suspension or other commission action, the FIRST SUCH application BY EACH ILEC shall be deemed approved and become effective on the NINETY thirty first day or later date if requested by the company; SUBSEQUENT APPLICATIONS SHALL BE DEEMED APPROVED AND BECOME EFFECTIVE ON THE THIRTY-FIRST DAY OR LATER DATE IF REQUESTED BY THE COMPANY.~~
 - (2) ~~An ILEC ETC requesting recovery of any expenses not specified in paragraph (P)(1) of this rule shall file a UNC application with the commission. An applicant must provide documentation to support its proposed customer billing surcharge and its compliance with this rule and must further support its request for recovery of any expenses not specified in paragraph (P)(1) of this rule with a detailed supporting memorandum. Absent suspension or commission action, the application shall be deemed approved and become effective on the one hundred and twenty-first day or later date if requested by the company.~~

- (Q) If an ILEC ETC chooses to establish a customer billing surcharge to recover its lifeline expenses under paragraph (P)(1) ~~or (P)(2)~~ of this rule, the lifeline surcharge shall not appear in the section of the bill reserved for taxes and government-mandated charges as set forth in 47 C.F.R. 64.2400 - 64.2401.
- (R) An ILEC ETC that is authorized to establish a customer billing surcharge under ~~either paragraph (P)(1) or (P)(2)~~ of this rule shall annually file with the commission a report that identifies actual amounts recovered and the actual lifeline service discounts and any other lifeline service expenses incurred for the prior period. The company shall provide such data as necessary to enable the commission to validate such amounts to ensure that the company did not over recover its approved expenses from customers. The commission shall establish for each such company the timeframe for filing this report when the commission approves any such billing surcharge. The annual filing may be contained in a request to adjust the billing surcharge in accordance with paragraph (P)(1) ~~or (P)(2)~~ of this rule, but shall be provided via a separate filing and docketed in a generic case number to be established by the commission, if no adjustment to the billing surcharge is sought. ANY OVER-RECOVERY OR UNDER-RECOVERY SHALL BE OFFSET AGAINST OR ADDED TO THE NEXT YEAR'S RECOVERY.
- (S) Every ILEC ETC shall file with the commission in its annual assessment report the number of its customers who receive, at the time of filing of the report, lifeline service. Upon request of commission staff, additional information regarding customer subscription to and disconnection of lifeline service shall be provided, in the manner and timeframe determined by COMMISSION staff. SUCH ADDITIONAL INFORMATION SHALL ALSO BE PROVIDED TO OCC.
- (T) Competitive eligible telecommunication carriers (CETCs) lifeline requirements
 - (1) The lifeline requirements found in paragraphs (B), (C), (D), (G), (H), (I), (L), (M), (N), and (O) of this rule apply to the lifeline service offered by any CETC, as applicable to that CETC's service offerings.
 - (2) A CETC shall provide a report of the number of its lifeline customers and any additional information regarding customer subscription to and disconnection of lifeline service in the manner and timeframe determined by commission staff.

4901:1-6-20 Discounts for persons with communications disabilities.

- (A) In accordance with section 4927.14 of the Revised Code, telephone companies that provide toll service shall, upon written application and certification of their disabled status, by a residential disabled customer or a disabled member of a customer's household, offer the following applicable discounts to persons with communication disabilities:
 - (1) No less than a straight seventy per cent discount off the basic message toll service (MTS) current price list day rates on a twenty-four hour a day basis.
 - (2) Free local and long distance DIRECTORY ASSISTANCE (DA), if such service is offered to customers.
- (B) Certification of disabled status can be evidenced by either a certificate from a physician, health care official, state agency, or diploma from an accredited educational institution for the disabled.
- (C) The aforementioned discounts are also applicable to all MTS and DA calls placed through the telecommunications relay service. The discounts shall not apply to sponsor charges associated with calls placed to pay-per-call services, such as 900, 976, or 900-like calls. Additionally, certified disabled individuals who utilize telebraille devices are eligible to receive free access to local and intrastate long distance directory assistance. Lines maintained by nonprofit organizations and

governmental agencies, are also eligible to receive a discount off of their MTS rates upon written application and verification that such lines are maintained for the benefit of the disabled.

Rule 4901:1-6-21 Termination of community voicemail pilot program.

The commission shall require the chosen vendor(s), as part of the competitive bidding process for the community voicemail service pilot program, to address in their competitive bids the manner in which recipients of services under the community voicemail service pilot program will be notified or educated of the program's termination. THE COMMISSION WILL, UPON ACCEPTANCE OF BID(S), ESTABLISH BY RULE THE MANNER IN WHICH RECIPIENTS OF SERVICES UNDER THE COMMUNITY VOICEMAIL SERVICE PILOT PROGRAM WILL BE NOTIFIED OR EDUCATED OF THE PROGRAM'S TERMINATION.

4901:1-6-22 Alternative operator service and inmate operator service.

- (A) Alternative operator service (AOS) and inmate operator service (IOS) are subject to the rate restrictions set forth in this rule.
- (B) AOS parameters
 - (1) Except as exempted by paragraph (B)(2) of this rule, all AOS services shall be provided under the following parameters:
 - (a) The maximum amount of any operator assistance charge or call set up fee that may be applied by an AOS provider to any intrastate AOS call shall not exceed two dollars and seventy-five cents per call. The maximum rate of any usage sensitive charge that may be applied by an AOS provider to any intrastate AOS call shall not exceed forty-five cents per minute of use.
 - (b) Notice of any change in AOS rates, whether upward or downward, must be filed by the AOS provider with the commission in the form of a new pricing list filed in the AOS provider's TRF docket.
 - (c) Upon request of the ~~end-user~~ CALLER or THE billed party, and at no additional charge, the AOS provider must quote the actual intrastate price list rates for all components of the call to the ~~end-user~~ CALLER OR THE BILLED PARTY. For live and automated operator-assisted calls, each AOS provider must brand its calls by having its operator identify the name of the AOS provider to the ~~end-user~~ CALLER or THE billed party prior to the processing of the calls. After such notification and rate disclosure (if requested), the AOS provider must allow the ~~end-user~~ CALLER or THE billed party an opportunity to decide not to utilize the AOS provider's service and reject the call without incurring any charges.
 - (d) AOS providers may not charge ~~end-users~~ BILLED PARTIES for uncompleted calls.
 - (e) Each AOS provider must post conspicuous notice on the telephone instrument through which the ~~end-user~~ CALLER is placing the call utilizing the following format and language:

Operator services provided to this telephone by: (certified name of the AOS provider).

For information or to lodge a complaint call toll free: (a toll-free number to reach the AOS provider).

- (f) Each AOS provider must include in its contract with each of its customers language requiring that the customer permit the AOS provider to take whatever steps are necessary to ensure that the AOS provider complies with all of the established requirements and restrictions pertaining to AOS.
 - (g) AOS providers may not charge ~~end-users~~ BILLED PARTIES surcharges in addition to the AOS service charges which, in turn, must comply with the per-minute and per-call rate caps set forth in paragraph (B)(1)(a) of this rule. This restriction means that no surcharges, including, but not limited to, bill rendering charges, nonsubscriber charges, property imposed fees (PIFs), and any additional charge which ~~an AOS customer~~ THE ENTITY CONTRACTING WITH THE AOS PROVIDER may request the AOS provider to bill ~~an end user~~ BILLED PARTY may be levied by the AOS provider on the ~~end user~~ BILLED PARTY. Any surcharges imposed by ~~an AOS customer~~ THE ENTITY CONTRACTING WITH THE AOS PROVIDER are to be billed separately by the ENTITY CONTRACTING WITH THE AOS customer PROVIDER, AND MUST BE DISCLOSED TO THE CALLER AND TO THE BILLED PARTY, IF THE BILLED PARTY IS DIFFERENT FROM THE CALLER.
 - (h) AOS providers may not assess ~~end-users~~ BILLED PARTIES backhauling charges regardless of the precise route the AOS providers must take in order to transport the calls.
 - (i) Each AOS provider must provide to ~~end-users~~ CALLERS, through the ~~end-user's~~ telephone instrument USED BY THE CALLER, access to all telecommunications service providers.
 - (j) Upon request, each AOS provider must provide, as directed by the commission or its staff, information concerning its operations, including but not limited to, customer lists and call records.
- (2) AOS providers shall be exempt, on a per call basis, from paragraphs (B)(1)(a), (B)(1)(c) and (B)(1)(g) of this rule where the following service parameters are met:
- (a) The AOS provider identifies itself at the beginning of the call before the ~~end-user~~ BILLED PARTY incurs any charges.
 - (b) The AOS provider discloses to the ~~end-user who is charged for the call~~ BILLED PARTY, at the beginning of the call before the ~~end-user~~ BILLED PARTY incurs any charges, a quotation of the total cost of the call, including a breakdown of all charges imposed by the AOS provider and the applicability of any taxes.
 - (c) The AOS provider allows the ~~end-user~~ BILLED PARTY to terminate at no charge before the call is connected.
 - (d) The AOS provider retains an audio-recorded verification of the ~~end-user~~ BILLED PARTY's acceptance of the quoted rates and charges of the call. Such verification, which must be provided to the commission or its staff upon request, shall at a minimum consist of an audio recording that preserves evidence of those portions of the call during which:
 - (i) The AOS provider discloses its rate charges to the ~~end-user~~ BILLED PARTY in accordance with paragraph (B)(2)(b) of this rule.
 - (ii) The ~~end-user~~ BILLED PARTY both identifies himself or herself and ~~also~~ affirmatively accepts the quoted rates and charges for the call before the call is completed and any charges are incurred. Such ~~end-user~~ BILLED PARTY identification and acceptance may be accomplished on AOS calls when ~~an end-user~~ THE BILLED PARTY enters his or her credit card or calling card number.

(C) IOS parameters

- (1) The maximum rate of any usage sensitive charge that may be applied by an IOS provider to any intrastate IOS call shall not exceed thirty-six cents per minute of use. The maximum amount of any operator assistance charge or call set up fee that may be applied by an IOS provider to any intrastate IOS call shall not exceed two dollars and seventy-five cents.
- (2) Notice of any change in IOS rates, whether upward or downward, must be filed by the IOS provider with the commission in the form of a new pricing list in the IOS provider's TRF docket.
- (3) All IOS providers must furnish, on all intrastate IOS calls, at the beginning of the call before the ~~end-user~~ BILLED PARTY incurs any charges, immediate and full rate disclosures that quote the actual intrastate price lists rates for all components of the call. However, IOS providers may allow ~~end-users~~ BILLED PARTIES an opportunity to affirmatively decline receiving the required rate quote.
- (4) IOS providers may not charge ~~end-users~~ BILLED PARTIES surcharges in addition to the IOS service charges set forth in their commission-approved tariff which, in turn, must comply with the per-minute and per-call rate caps set forth in paragraph (C)(1) of this rule. This restriction means that no surcharges, including, but not limited to, bill rendering charges, nonsubscriber charges, PIFs, and any additional charge which ~~an~~ THE ENTITY CONTRACTING FOR THE IOS customer SERVICE may request the IOS provider to bill ~~an end-user~~ BILLED PARTY, may be levied by the IOS provider on the ~~end-user~~ BILLED PARTY. Any surcharges imposed by an ENTITY CONTRACTING WITH THE IOS customer PROVIDER are to be levied separately by the ~~IOS customer~~ ENTITY CONTRACTING WITH THE IOS PROVIDER, AND MUST BE DISCLOSED TO THE CALLER AND TO THE BILLED PARTY.
- (5) IOS providers may not charge for uncompleted calls.
- (6) Each IOS provider must include in its contract with each of its customers language requiring that the customer permit the IOS provider to take whatever steps are necessary to ensure that the IOS provider is in compliance with all of the established requirements and restrictions pertaining to IOS.
- (7) Upon request, each IOS provider must provide, as directed by the commission or its staff, information concerning its operations.
- (8) On all intrastate IOS calls, the IOS provider must allow the ~~end-user~~ BILLED PARTY to terminate at no charge before the call is connected.

4901:1-6-23 Pay Telephone Access Lines.

- (A) Upon request, an incumbent local exchange carrier (ILEC) must provide a pay telephone access line and local usage on the pay telephone access line to payphone service providers.
 - (1) The rates, terms, and conditions for pay telephone access lines shall be tarified and shall be filed through a thirty-day application for tariff amendment (ATA) filing in accordance with RULE 4901:-6-05 OF THE ADMINISTRATIVE CODE.
 - (2) All ILECs' currently tarified pay telephone access line rates are deemed reasonable, unless the commission determines otherwise through another commission proceeding.

(3) *Subsequent increases in rates and changes to the terms and conditions, for tariffed pay telephone access lines, shall be filed through a thirty-day ATA filing in accordance with RULE 4901:1-6-05 OF THE ADMINISTRATIVE CODE. Such applications require supporting documentation, including, but not limited to, DOCUMENTATION SHOWING THAT THE RATE PASSES the federal communications commission'S (FCC) new services test (NST) for pay telephone access lines, if applicable.*

(B) *Provisioning of pay telephone access lines including the rates, terms, and conditions of such lines is subject to the applicable laws, including rules or regulations adopted and orders issued by the commission or the FCC.*

4901:1-6-24 Wireless service provisions.

(A) The Commission has authority over wireless service providers to the extent set forth in this rule and section 4927.03, OF THE Revised Code.

(B) Registration

No wireless service provider shall operate in the state of Ohio without first registering with the commission. Every wireless service provider desiring to offer wireless service in Ohio shall file a zero-day registration notice in a radio common carrier (RCC) filing with the commission utilizing the telecommunications application form in ~~R~~Rule 4901:1-6-04 of the Administrative Code and providing all of the following:

- (1) The company's name.
- (2) The company's address.
- (3) The name of a contact person and that person's contact information.
- (4) A service description, including the general geographic areas served (no maps are required).
- (5) Evidence of registration with the Ohio secretary of state.
- (6) Evidence of notice to the Ohio department of taxation, public utilities tax division, of its intent to provide service.

(C) Change in operations

Every wireless service provider shall keep its registration information up to date by notifying the commission of any changes in its operations (i.e., mergers, abandonment, transfers, name changes, and changes in ownership) by submitting a zero-day notice to the commission for identification purposes utilizing an up-to-date version of the commission's telecommunications application form under its original RCC case designation code established during the wireless service provider's registration process.

(D) Assessment report

The requirements of sections 4905.10, 4905.14, and 4911.18, OF THE Revised Code, apply to wireless service providers. Wireless service providers are required to submit, at the time and in the manner prescribed by the commission, an annual assessment report and to pay the prescribed annual assessment for the maintenance of the commission. A copy of the form is available on the commission's web site or from the commission's fiscal division.

(E) Jurisdiction authorized by federal law and regulations

The commission has such power and jurisdiction with respect to wireless service providers, consistent with Sections 4927.03(B) and 4927.04(A), (B), (C), (D) and (F) of the Revised Code, to perform the obligations authorized by or delegated to it under federal law, including federal regulations, which obligations include performing the acts of a state commission as defined in the "Communications Act of 1934," 48 Stat. 1064, 47 U.S.C. 153, as amended, with respect to all of the following:

- (1) The rights and obligations under section 251 of the Telecommunications Act of 1996;
 - (2) Mediation and arbitration of disputes and approval of agreements under section 252 of the Telecommunications Act of 1996;
 - (3) Administration of telephone numbers and number portability;
 - (4) Certification of telecommunications carriers eligible for universal service funding; and
 - (5) Administration of federal regulations on customer proprietary network information
- (F) 9-1-1, Telecommunications Relay Service, ETC-ELIGIBLE TELECOMMUNICATIONS CARRIER and lifeline requirements, and Universal Service

The Commission has authority over wireless service providers as set forth in section 4905.84 and rule 4901:1-6-36 of the Administrative Code, as well as, sections 4931.40 to 4931.70 and 4931.99 of the Revised Code. The commission has authority over wireless service providers with respect to addressing carrier access policy and creating and administering mechanisms for carrier access reform as set forth in section 4927.15(C), OF THE Revised Code. To the extent that a wireless service provider seeks certification in Ohio as a telecommunications carrier eligible for universal service funding under 47 U.S.C. 214(e), the commission has authority to consider such application under rule 4901:1-6-09 of the Administrative Code and, to impose requirements with respect to lifeline under rule 4901:1-6-19 of the Administrative Code if the carrier seeks to withdraw funds from the universal service fund for the provision of lifeline service.

(G) Compliance and Enforcement

The commission has such authority over wireless service providers under section 4927.20, OF THE Revised Code, as is necessary to enforce compliance with every order, direction, and requirement of the commission made under authority of this rule, consistent with division (B) of section 4927.03, OF THE Revised Code. The commission has authority to adjudicate any dispute between telephone companies and wireless service providers or between wireless service providers that is within the commission's jurisdiction under section 4927.21, OF THE Revised Code.

(H) WIRELESS RESELLERS

THE COMMISSION HAS SUCH AUTHORITY OVER RESELLERS OF WIRELESS SERVICE AS SET FORTH IN SECTION 4927.03(B)(1) OF THE REVISED CODE.

4901:1-6-25 Withdrawal of telecommunications services.

- (A) Except as provided in paragraphs (B) and (D) of this rule, a telephone company may cease offering any telecommunications service, by providing a notice of withdrawal of such service or services.
- (1) Notice, consistent with rule 4901:1-6-07 of the Administrative Code, shall be provided to all affected customers, the office of the consumers' counsel (OCC), ~~and~~ the chief of the

- telecommunications division of the utilities department and the chief of the reliability and service analysis division of the service monitoring and enforcement department at least thirty days prior to the effective date that the telephone company will cease providing a specific telecommunications service.
- (2) At least thirty days prior to withdrawal of a specific telecommunications service, a telephone company shall provide written notice of its intent to cease providing service to its wholesale customers and to any telephone company wholesale provider of its services.
- (B) Withdrawal of basic local exchange service (BLES) by a competitive local exchange carrier (CLEC)
- (1) A CLEC shall not discontinue OFFERING BLES within an exchange(s) without filing a an zero-day notice filing (ZTA) APPLICATION to withdraw such service or services from its tariff. THE CLEC MAY FILE A ZERO-DAY NOTICE IN A ZERO-DAY TARIFF APPROVAL (ZTA) APPLICATION. CLECs must include with the application, at the time of filing, the actual customer notice and a notarized affidavit verifying that this customer notice has been provided to affected customers AND THE OCC at least thirty days prior to the effective date that the CLEC will cease providing BLES.
- (2) A CLEC ceasing to offer BLES shall return all deposits, including applicable interest, to its customers no later than ninety days after filing its withdrawal application unless a court of competent jurisdiction orders otherwise.
- (3) At least thirty days prior to withdrawal of BLES, a CLEC shall provide written notice of its intent to cease providing service to any telephone company from which the applicant obtains wholesale services.
- (C) Where applicable, a local exchange carrier ceasing to offer a telecommunications service shall provide a list of its assigned area code prefix(es) or thousand block(s) including any proposed dates or timelines, due to its withdrawal of any telecommunications service, wherein the telephone company's area code prefix(es) or thousand block(s) would be reassigned to another carrier and/or returned to the North American numbering plan administrator or pooling administrator.
- (D) ~~This rule does not apply to~~ TELEPHONE COMPANIES MAY NOT WITHDRAW any of the following UNDER THIS RULE:
- (1) BLES provided by an incumbent local exchange carrier;
- (2) Pole attachments under section 4905.71 of the Revised Code;
- (3) Conduit occupancy under section 4905.71 of the Revised Code;
- (4) Interconnection and resale agreements approved under the Telecommunications Act of 1996.

4901:1-6-26 Abandonment.

- (A) A telephone company seeking to abandon entirely telecommunications service in this state, including its tariff and certificate of public convenience and necessity, shall not abandon the service(s) it provides under a certificate without filing an abandonment application (ABN) to abandon service and to cancel its certificate of operation.
- (4B) Abandonment applications shall be filed at least thirty days prior to the effective date that the telephone company will cease providing service. The application shall include copies of any

notices provided pursuant to paragraphs (A)(2C) ~~to~~ AND (A)(3D) of this rule, as well as the list pursuant to paragraph (A)(9J) of this rule.

- (2C) At least thirty days prior to abandoning operations, a telephone company shall provide written notice of its intent to cease providing service to any telephone company from which the applicant obtains wholesale services.
- (3D) At least thirty days prior to abandoning operations, a telephone company shall provide written notice of its intent to abandon service to its retail customers and wholesale customers, TO THE OFFICE OF THE CONSUMERS' COUNSEL, IF RESIDENTIAL CUSTOMERS ARE AFFECTED, and to any telephone company wholesale provider of its services, if applicable, consistent with rule 4901:1-6-07 of the Administrative Code. If the telephone company does not have any retail customers at the time it seeks to abandon service and cancel its certificate, customer notice is not required with its application.
- (4E) A telephone company abandoning operations shall return all deposits, including applicable interest, to its customers no later than ninety days after filing its abandonment application unless a court of competent jurisdiction orders otherwise.
- (5F) If the commission does not act upon the application within thirty days of the filing date, a telephone company's application will be approved in accordance with the thirty-day automatic approval process described in rule 4901:1-6-05 of the Administrative Code and its certificate of public convenience and necessity will be canceled.
- (6G) This rule does not apply to basic local exchange service (BLES) provided by an incumbent local exchange carrier.
- (7H) An abandoning telephone company may not discontinue services provided to any customer or telephone company until the abandonment application has been approved by the commission.
- (8I) No telephone company may discontinue services provided to an abandoning local exchange carrier (LEC) prior to the effective date that the LEC will abandon service.
- (9J) Where applicable, the LEC abandoning operations shall provide a list of its assigned area code prefix(es) or thousands block(s) including any proposed dates or timelines, due to its abandonment proceedings, wherein the LEC's area code prefix(es) or thousands block(s) would be reassigned to another carrier and/or returned to the North American numbering plan administrator or pooling administrator.

4901:1-6-27 Provider of Last Resort (POLR).

- (A) Except as otherwise provided in this rule, an incumbent local exchange carrier (ILEC) shall provide basic local exchange service (BLES) to all persons or entities in its service area requesting that service, and that service shall be provided on a reasonable and nondiscriminatory basis.
- (B) An ILEC is not obligated to construct facilities and provide BLES, or any other telecommunications service, to the occupants of multitenant real estate, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, if the owner, operator, or developer of the multitenant real estate does any of the following to the benefit of any other provider of telecommunications service:
 - (1) Permits only one provider of telecommunications service to install its facilities or equipment during the construction or development phase of the multitenant real estate;

- (2) Accepts or agrees to accept incentives or rewards that are offered by a provider of telecommunications service to the owner, operator, developer, or occupants of the multitenant real estate and are contingent on the provision of telecommunications service by that provider to the occupants, to the exclusion of services provided by other providers of telecommunications service; or
 - (3) Collects from the occupants of the multitenant real estate any charges for the provision of telecommunications service to the occupants, including charges collected through rents, fees, or dues.
- (C) An ILEC not obligated to construct facilities and provide BLES pursuant to paragraph (B) of this rule shall notify the commission of that fact within one hundred twenty days of receiving knowledge thereof. Such notification shall be filed in a zero-day notice in a ZERO-DAY TARIFF APPROVAL (ZTA) case caption including, where applicable, any necessary tariff revisions outlining the geographic boundaries of the ILEC's service area to which the notification would apply. In addition, the notice shall specify the circumstances under which the company qualifies to invoke paragraph (B) of this rule.
- (D) An ILEC that receives a request from any person or entity to provide BLES under the circumstances described in paragraph (B) of this rule shall, within fifteen days of receipt of such request, provide notice to the REQUESTING person or entity specifying whether the ILEC will provide the requested service. If the ILEC provides notice that it will not serve the person or entity, the notice shall:
- (1) Explain the reason for not offering the requested BLES; and
 - (2) Describe the person's or entity's right to file a complaint with the commission under section 4927.21 of the Revised Code within thirty days after receipt of the notice.
- (E) In resolving any complaint under paragraph (D) of this rule, the commission's determination shall be limited to whether any circumstance described in paragraphs (B)(1) to (3) of this rule exists. Upon a finding by the commission that such a circumstance exists, the complaint shall be dismissed. Upon a finding that such circumstances do not exist, the person's or entity's sole remedy shall be provision by the ILEC of the requested service within a reasonable time, as determined by the commission.
- (F) When the circumstances described in paragraph (B) of this rule cease to exist, and a person or entity subsequently requests that the ILEC provide BLES, the ILEC shall be required to provide BLES to such real estate, unless the ILEC files with the commission a request for waiver pursuant to paragraph (G) of this rule and such request is granted. In the event that the commission determines that the ILEC should not be required to provide BLES, the commission will initiate a commission proceeding for determining a successor telephone company.
- (G) An ILEC may apply to the commission for a waiver from compliance with paragraph (A) of this rule in circumstances other than those listed in paragraph (B) of this rule, through an application for waiver (WVR) filing.
- (1) The application for waiver of the ILEC's obligation under paragraph (A) of this rule shall include, at the minimum, ALL OF the following:
 - (a) ~~A clear and detailed~~ DESCRIPTION ~~outline~~ of the geographic boundary of the ILEC's service area to which the requested waiver would apply;
 - (b) The requested effective date of the waiver;

- (c) A ~~C~~Clear identification of class of customer impacted by the waiver, if any customer-class limitation of waiver is requested, and the number of persons or entities who would be impacted by the requested waiver.;
- (d) A ~~C~~Clear explanation of the rationale behind the requested waiver, including ~~but not limited to,~~ an unusual technical limitation or an economic analysis demonstrating a financial hardship to provide BLES in the requested geographic area and an identification of any available alternative providers of telecommunications service.;
- (e) A ~~P~~Proposed newspaper customer notice, consistent with paragraph (G)(2) of this rule.;
- (f) A ~~C~~Clear explanation as to whether the requested waiver would apply only to prospective customers or to the entire customer-base in the requested geographic area.;
- (g) A ~~C~~Clear explanation of how customers would otherwise have access to BLES or alternative service offerings that are ~~just and~~ reasonable SUBSTITUTES FOR BLES.; ~~and~~
- (h) A ~~C~~Clear explanation of how the requested waiver would be just, reasonable, and not contrary to the public interest.

FOR PURPOSES OF THIS RULE, "PERSONS IMPACTED BY THE REQUESTED WAIVER" SHALL BE DEFINED, CONSISTENT WITH SECTION 4927.11(C) OF THE REVISED CODE, AS "AFFECTED PERSONS," AND SHALL INCLUDE, AT A MINIMUM, ALL CUSTOMERS OF THE REQUESTING ILEC WITHIN THE GEOGRAPHIC BOUNDARY OF THE ILEC'S SERVICE AREA TO WHICH THE REQUESTED WAIVER WOULD APPLY; ANY TOWNSHIP, VILLAGE, MUNICIPALITY OR COUNTY LOCATED WITHIN THE GEOGRAPHIC BOUNDARY OF THE ILEC'S SERVICE AREA TO WHICH THE REQUESTED WAIVER WOULD APPLY; AND, IF ANY RESIDENTIAL CUSTOMER IS IMPACTED, THE OFFICE OF THE CONSUMERS' COUNSEL (OCC).

- (2) The ILEC applying for the waiver shall FILE provide, with its application, a draft copy of its proposed customer notice to be published one time in a newspaper of general circulation throughout the service area identified in the application. In addition, the ILEC shall also provide any other notice required by the commission in the waiver proceeding to any person(s) who is or would be potentially impacted by the requested waiver. Upon the filing of a waiver application filed under this paragraph, the commission, attorney examiner, or legal director shall, WITHIN THREE DAYS, issue an entry which addresses customer notice, establishes a reasonable opportunity for comment, schedules a hearing as set forth in paragraph (G)(3) of this rule, and addresses any other procedural matters.
 - (3) The Commission shall order a public hearing in the service area(s) identified in the application pursuant to paragraph (G)(1)(a) of this rule.
 - (4) No later than one hundred twenty days after the filing of a complete application pursuant to paragraph (G) of this rule, the commission either shall issue an order granting the waiver if, upon investigation, it finds the waiver to be just, reasonable, and not contrary to the public interest, and that the applicant demonstrates a financial hardship or an unusual technical limitation, or shall issue an order denying the waiver based on a failure to meet those standards and specifying the reasons for the denial.
- (H) A waiver application filed under paragraph (G) of this rule that does not contain all of the information required by paragraph (G)(1) of this rule will be considered deficient and will not trigger the 120-day review period in (G)(4) of this rule until the date that a complete application has been filed by the applicant. The commission, the legal director, or an attorney examiner has the authority to issue an

entry either dismissing the application or establishing the date that the application is complete and begins the 120-day review period.

4901:1-6-28 Bankruptcy.

A telephone company seeking bankruptcy protection from any jurisdiction under Chapter 7 or 11 of the United States bankruptcy code shall notify the commission by serving notice of the bankruptcy filing on the chief of the telecommunications section of the utilities department. IF RESIDENTIAL CUSTOMERS ARE AFFECTED, THE TELEPHONE COMPANY MUST NOTIFY THE OFFICE OF THE CONSUMERS' COUNSEL. The notification shall include a copy of any and all notices or pleadings filed in the bankruptcy court, specifically setting forth the date and type of bankruptcy, the name and address of the bankruptcy court, the name and address of the bankruptcy attorney, and the name and address of a person at the company who can provide additional information regarding Ohio customers.

4901:1-6-29 Telephone company procedures for notifying the commission of changes in operations.

- (A) Every telephone company shall update its certification authority if there is any change in its operations as identified in this rule.
- (B) Procedures for notifying the commission of updates to certification authority and certain changes in operations by a local exchange carrier (LEC) providing basic local exchange service (BLES)
 - (1) A LEC providing BLES shall file a telecommunications application form pursuant to paragraph (A) of rule 4901:1-6-04 of the Administrative Code and the required attachments as set forth on that form for an application notifying the commission of the following changes in its operations in the appropriate application listed below:
 - (a) ATC - An application to transfer a certificate to a preselected transferee.
 - (b) ATR - An application to conduct a transaction involving one or more LECs providing BLES for the purchase, sale, or lease of property, plant, or business which may affect the operating authority of a party to the transaction.
 - (c) ACN - An application to change the name of a LEC providing BLES.
 - (2) All applications filed pursuant to paragraph (B)(1) of this rule are subject to a thirty-day automatic approval process as described in rule 4901:1-6-05 of the Administrative Code.
- (C) Procedures for notifying the commission of updates to certification authority and certain changes in operations by telephone companies
 - (1) All telephone companies, except ~~local exchange carriers (LECS)~~ providing BLES, shall file a telecommunications application form pursuant to paragraph (A) of rule 4901:1-6-04 of the Administrative Code and the required attachments as set forth on that form when notifying the commission of the following changes in operations (CIO):
 - (a) For any change in ownership which is transparent to ~~end user~~ CUSTOMERS.
 - (b) For an application to transfer a certificate and/or conduct a sale or lease of property, plant, customer base, or business which may affect the operating authority of a party(ies) to the transaction.

- (c) For an application by two or more telephone companies to merge.
 - (d) For an application to change the name of a telephone company.
- (2) A CIO application is subject to a zero-day notice filing process as described in rule 4901:1-6-05 of the Administrative Code.
- (D) Customer notification

A telephone company shall provide to its affected customers at least fifteen days' advance notice (e.g., direct mail, bill insert, or bill notation) of any change in the company's operations identified by this rule that is not transparent to its customers and may impact service, and file a copy of such notice with the commission concurrent with the filing of an application under this rule. In the alternative, a telephone company subject to the notification procedures set forth in 47 C.F.R. 63.71, may FILE submit evidence of a customer notice already provided for the purpose of informing subscribers of a change in operations consistent with the requirements of the federal communications commission.

- (DE) Procedures for merger and change in control applications of a LEC providing BLES

~~A LEC PROVIDING telephone company that is a public utility under section 4905.02 of the Revised Code and that provides BLES basic local exchange service~~ shall obtain the prior approval of the commission for a change in control (ACO) or approval of a merger with another telephone company (AMT) under section 4905.402 of the Revised Code. An applicant shall file with the commission a telecommunications application form pursuant to paragraph (A) of rule 4901:1-6-04 and the required attachments as set forth on that form. An AMT and/or ACO must demonstrate that the change will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll or charge. If the commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application, and after any necessary hearing, the commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the commission shall approve the application and make such order as it considers proper. If the commission fails to issue an order within thirty days of the filing of the application, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved.

4901:1-6-30 Company records and complaint procedures.

- (A) The commission may investigate or examine the books, records, or practices of any telephone company to the extent of the commission's jurisdiction over the company under sections 4927.01 to 4927.21, ~~OF THE~~ Revised Code. Telephone companies shall have available for auditing or inspection by commission staff sufficient books, records, contracts, documents, and papers for any purpose incidental to the commission's authority under sections 4927.01 to 4927.21, ~~OF THE~~ Revised Code, in accordance with these rules and the rules and procedures prescribed by the federal communications commission~~(FCC)~~.
- (1) Records should be retained BY TELEPHONE COMPANIES for at least eighteen months, unless otherwise specified by the commission.
 - (2) Upon commission staff request, the telephone company shall provide records of sufficient detail, to permit review of the telephone company's compliance with the rules of this chapter. Upon request, the telephone company shall provide data or information in a format agreed upon by the commission staff.
- (B) A telephone company shall provide commission staff with a company contact, including a toll free number and an e-mail address, for complaint resolution and shall respond to commission and consumer

inquiries and complaints in a reasonable and timely manner. THIS NUMBER AND E-MAIL ADDRESS SHALL ALSO BE PROVIDED TO THE OFFICE OF THE CONSUMERS' COUNSEL.

4901:1-6-31 Emergency and outage operations.

- (A) Each facilities-based local exchange carrier (LEC) shall design, operate, and maintain its facilities to continue to provide customers with the ability to originate and receive calls at all times.
- (B) Each facilities-based LEC shall submit, within two hours of discovery, to the commission's outage coordinator AND THE OFFICE OF THE CONSUMERS' COUNSEL (OCC) and, when appropriate, the news media in the affected area, a notification that it has experienced an outage, whenever that outage occurs on any facility that it owns, operates, leases or otherwise utilizes and is both:
 - (1) Expected to last for a period in excess of thirty minutes.
 - (2) Potentially affects at least nine hundred thousand user minutes in the incumbent local calling area.
- (C) Each facilities-based LEC shall report, by telephone or electronic means, a disruption of 9-1-1 services, which impairs 9-1-1 service within a given county 9-1-1 system, immediately to each county 9-1-1 public safety answering point (PSAP), to the Ohio 9-1-1 coordinator, THE OCC and to the news media in the affected area, when appropriate.
- (D) Each facilities-based LEC experiencing a loss of communications or selective routing to a ~~public safety answering point~~ PSAP, as a result of an outage described under paragraphs (B) and (C) of this rule, shall also notify, as soon as possible, by telephone or electronic means, any official who has been designated by the management of the affected 9-1-1 facility as the LEC's contact person for communication outages at that facility; and the LEC shall convey to that person all available information that may be useful to the management of the affected facility in mitigating the effects of the outage on efforts to communicate with that facility.
- (E) Each facilities-based LEC experiencing an outage described under paragraphs (B) and (C) of this rule, shall electronically submit to the commission's outage coordinator AND THE OCC the following information:
 - (1) A notification that it has experienced a outage, which shall include the name of the reporting entity, the date and time of the onset of the outage, a brief description of the problem, the particular service affected, the geographic area affected by the outage, the number of customers affected, an estimate of when the service, including 9-1-1, will be restored, and a contact name and telephone number by which the commission's outage coordinator AND THE OCC may contact the reporting entity.
 - (2) Not later than seventy-two hours after discovering the outage, an initial communications outage report, which shall include all pertinent information then available on the outage and shall be submitted in good faith.
 - (3) Not later than thirty days after discovering the outage, the provider shall submit electronically a final communications outage report, which shall include all pertinent information on the outage, including any information that was not contained in, or that has changed from that provided in, the initial report.
- (F) Each facilities-based LEC shall develop, implement, and maintain an emergency plan and make it available for review by commission staff AND THE OCC. The plan shall include, but not be limited to, all of the following:

- (1) Procedures for maintaining and annually updating a list of those customers who have subscribed to the federal telecommunications service priority program, as identified in 47 C.F.R. 64, appendix A.
- (2) Procedures for priority treatment in restoring out-of-service trouble of an emergency nature for customers with a documented medical or life-threatening condition.
- (3) In addition to the telecommunications service priority program, each LEC shall develop policies and procedures regarding those customers who require priority treatment for out-of-service clearance. Such procedures shall include a table of restoration priority, including, but not limited to, subscribers such as police and fire stations, hospitals, key medical personnel, and other utilities.
- (4) Procedures for restoring service to priority critical facilities customers.
- (5) Identification and annual updates of all of the facilities-based LEC's critical facilities and reasonable measures to protect its personnel and facilities.
- (6) Assessments and evaluations of telecommunications facilities available to provide back-up service capabilities.
- (7) Procedures for after action assessments and reporting following activation of any part of the emergency plan. An after-action report will be written and will include lessons learned, deficiencies in the response to the emergency, and deficiencies in the emergency plan.
- (8) A current list of the names and telephone numbers of the facilities-based LEC's' emergency service personnel to contact and coordinate with in the event of any real or anticipated local or national threats to its ability to provide telecommunication service.
- (9) A current list of the names and telephone numbers of the facilities-based LEC's emergency service personnel that is made available to the commission's emergency coordinator, upon request.
- (10) A continuity of operations plan to assure continuance of minimum essential functions during a large scale event in which staffing is reduced. Such plans shall provide for:
 - (a) Plan activation triggers such as the world health organization's pandemic phase alert levels, widespread transmission within the United States, or a case at one or more locations within Ohio.
 - (b) Identification of a pandemic coordinator and team with defined roles and responsibilities for preparedness and response planning.
 - (c) Identification of minimal essential functions, minimal staffing required to maintain such essential functions, and personnel resource pools required to ensure continuance of those functions in progressive stages associated with a declining workforce.
 - (d) Identification of essential employees and critical inputs (e.g., raw materials, equipment, suppliers, subcontractor services/products, and logistics) required to maintain business operations by location and function.
 - (e) Policies and procedures to address personal protection initiatives.
 - (f) Policies and procedures to maintain lines of communication with the public utilities commission of Ohio during a declared emergency.

- (G) Each facilities-based LEC shall amend its emergency plan in accordance with the findings identified in the after-action assessment report required under paragraph (F)(7) of this rule.

4901:1-6-32 ~~Zones of operation, b~~Boundary changes, and administration of borderline boundaries.

This rule applies to all incumbent local exchange carriers (ILECs) providing basic local exchange service (BLES).

- (A) Except as otherwise provided in these rules, an ILEC shall continue to make available BLES to all persons and entities in its traditional service area. Commission-maintained telephone exchange boundary maps shall be the official source/documentation of ILEC service areas and boundaries.
- (B) Whenever an ILEC proposes to change the boundary of an exchange area, the ILEC shall file an application seeking to change the boundary. Whenever the exchange area involves the exchange area of two or more ILECs, the application shall be filed jointly by the companies involved.
- (C) Such application to change boundaries (ACB) is subject to a fourteen-day automatic approval procedure. An ILEC application submitted for approval shall include:
 - (1) A description of the change being made to the boundary. The company shall work with staff to ensure that the commission's maps reflect accurately the boundary changes, using the company's latest technology and the telephone boundary quadrangle maps as found on the commission's website as a basis for the boundary change.
 - (2) The reasons for making the change, and one of the following:
 - (a) A statement explaining the effect of the change, if any, on existing BLES subscribers.
 - (b) A statement attesting that the change does not adversely affect the service being furnished to any existing BLES subscriber.
 - (c) A statement attesting that each existing BLES subscriber whose service is adversely affected has consented to the change.
- (D) Any borderline boundary dispute between ILECs or between an ILEC and a customer shall be subject to the complaint procedures under section 4927.21 of the Revised Code.

4901:1-6-33 Excess construction charges applicable to certain line extensions for the furnishing of local exchange telephone service.

- (A) An incumbent local exchange carrier (ILEC) shall provide basic local exchange service (BLES) in its traditional service area to all persons or entities in its service area requesting that service except as otherwise provided in section 4927.11 of the Revised Code.
- (B) Where no facilities are available and where an ILEC must construct permanent facilities on public rights-of-way in order to furnish service to an applicant or applicants for service in its traditional service area, the ILEC may require the applicant to pay THE construction charges in excess of the cost of one-half mile of standard pole line in place FROM THE POINT OF ENTRANCE OF THE APPLICANT'S PRIVATE PROPERTY, MEASURED ALONG THE PUBLIC RIGHT-OF-WAY EITHER FROM THE NEAREST EXISTING DISTRIBUTING PLANT OF THE LEC OR THE NEAREST POINT TO WHICH THE LEC PLANS TO EXTEND ITS FACILITIES UNDER AN APPROVED CONSTRUCTION PROGRAM, WHICHEVER IS CLOSER. A credit against the cost of excess construction charges may be given where an applicant performs the labor of digging holes, or trimming or removing trees in the right-of-way

in accordance with the ILEC's specifications. Where more than one applicant is to be furnished service along the same route, the applicants as a group may be required to pay THE construction charges in excess of the cost of one-half mile of standard pole line in place, multiplied by the number of applicants.

- (C) An ILEC may not charge an applicant for any excess construction charges for BLES unless THE ABILITY TO SO CHARGE AND THE AMOUNT OF SUCH CHARGE ~~they~~ are set forth in the company's tariff and approved by the commission.

4901:1-6-34 Filing of contracts, agreements, or arrangements entered into between telephone companies.

When necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code, and only as required by the commission, a telephone company shall file with the commission a copy of any contract, agreement, or arrangement, in writing, with any other public utility relating in any way to the construction, maintenance, or use of its plant or property, or to any service, rate, or charge.

4901:1-6-35 Filing of reports by telephone companies subject to the federal communications commission.

Upon request, each telephone company operating within the state of Ohio shall submit to the director of the utilities department of the commission, or the director's designee, a copy of any reports filed with the federal communications commission pursuant to 47 C.F.R. 43.

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, and providers of advanced services or internet protocol-enabled services that are competitive with or functionally equivalent to voice-grade, end user access lines. 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 in paragraph (B) of this rule shall be assessed according to a schedule established by the commission.
- (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 communications commission (~~FCC~~) 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 tariff application (ZTA) with the commission, in accordance with the application process rule 4901:1-6-04 of the Administrative Code. ~~The ZTA will be subject to the approval time frames found in 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.

4901:1-6-37 Assessments and Annual Reports.

- (A) Every telephone company and every wireless service provider shall file an annual report, as required by the commission each year and in the format prescribed by commission entry. The annual report shall be limited to information necessary for the commission to calculate the assessment provided for in section 4905.10 of the Revised Code. The commission shall protect any confidential information in every company and provider report.
- (B) In addition to the information necessary for the commission to calculate the assessment provided for in section 4905.10 of the Revised Code, telephone companies subject to section 4905.71 of the Revised Code, shall provide in their annual report information required by the commission to calculate pole attachment and conduit occupancy rates and any other information the commission determines necessary to fulfill its responsibility under section 4905.71 of the Revised Code. This information shall be provided in the format prescribed in the commission's annual reporting form for telephone companies.
- (C) The commission shall, by commission entry, impose on and collect from each telephone company that is a local exchange carrier an assessment to pay for costs incurred by vendors under any contract for the provision of the community voicemail pilot program in this state.

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