

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules)
to Implement Substitute Senate Bill 162.)

Case No. 10-1010-TP-ORD

INITIAL COMMENTS OF THE AT&T ENTITIES

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INITIAL COMMENTS OF THE AT&T ENTITIES

Introduction

The AT&T Entities¹ ("AT&T"), by their attorneys, submit these initial comments in response to the Entry adopted by the Commission on July 29, 2010 ("Entry") in the captioned case. In that Entry, the Commission sought comment on rules proposed by its Staff to implement the provisions of Sub. S. B. 162 ("the Act"), which takes effect on September 13, 2010.

The Act significantly reduces the regulation of telecommunications services in Ohio, while maintaining important consumer protections and the "safety net" of lifeline service for low income and other qualifying residential customers of the incumbent local telephone companies ("ILECs") such as AT&T Ohio. As a result of these changes, the Commission's authority over the telecommunications marketplace will be reduced.

The Act directs the Commission to adopt rules to implement its provisions in several areas. In many of these areas, the current Commission rules can be tailored, as necessary, to adapt them to the legislation's changes. In a few areas, though, the Commission is called upon to adopt rules that address new subject areas. In each case, though, the Commission must take care to not contradict the revised state telecommunications policy, set forth in amended section 4927.02 of the Revised Code, or to frustrate the intent of the Act.

¹ The AT&T Entities are The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, SBC Long Distance d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, AT&T Corp. d/b/a AT&T Advanced Solutions, Cincinnati SMSA, L.P., and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

In reviewing the rules that will be adopted in this process, the Joint Committee on Agency Rule Review ("JCARR") may recommend the invalidation of a rule if it finds that:

- (a) the Commission has exceeded the scope of its statutory authority in proposing the rule, amendment, or rescission;
- (b) the proposed rule, amendment, or rescission conflicts with another rule, amendment, or rescission adopted by the Commission or another rule-making agency;
- (c) the proposed rule, amendment, or rescission conflicts with the legislative intent in enacting the statute under which the rule-making agency proposed the rule, amendment, or rescission;

* * *

R. C. § 119.03(I)(1)(a) - (c). In light of the statutory standards for JCARR's review of agency rules, the Commission should analyze each of the proposed rules with those standards in mind. Especially as to the first of these standards - - which involves the scope of the Commission's statutory authority - - the Commission must be careful to stay within the new limitations on its statutory authority that are set forth in the Act.

One provision of the Act is of paramount importance in this regard:

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

R. C. § 4927.03(D) (emphasis added). Each of the proposed rules, therefore, must be examined in order to ascertain and confirm the Commission's statutory authority to adopt such a rule. In several instances, the proposed rules fail this fundamental test, as detailed below. In those cases, the proposed rule exceeds the Commission's statutory authority to regulate at all, or to regulate in the manner envisioned. In other cases, the proposed rules conflict with the legislative intent,

contrary to the third prong of the rule review statute. Here, modifications must be made to the proposed rules in order to properly carry out the legislative intent.

In this context, it is important to understand the new limitations on the Commission's traditional "general supervision" of telephone companies. The Commission's power of "general supervision" over public utilities is specified in R. C. §§ 4905.04 and 4905.06. In the first section, the Commission is "vested with the power and jurisdiction to supervise and regulate public utilities and railroads" The second section provides that the Commission ". . . has general supervision over all public utilities within its jurisdiction as defined in section 4905.05 of the Revised Code"

The Act, however, newly limits the application of those sections to telephone companies. R. C. § 4927.03(C), adopted in the Act, provides that, for purposes of Chapter 4927 of the Revised Code, R. C. §§ 4905.04 and 4905.06, among several other sections of the Revised Code, ". . . do not apply to a telephone company . . . except to the extent necessary for the commission to carry out sections 4927.01 to 4927.21 of the Revised Code." Therefore, it is only when it is necessary for the Commission to carry out its specified powers in the new Chapter 4927 that it can rely on the "general" powers under the sections like R. C. §§ 4905.04 and 4905.06. Read in conjunction with the limitation on the Commission's authority in R. C. § 4927.03(D), this means that the Commission may only use its general powers to carry out its specific Chapter 4927 authority.²

² This is confirmed in the final Ohio Legislative Service Commission bill analysis for Sub. S. B. 162, p. 20.

Rule-by-Rule Comments

4901:1-6-01 Definitions

Division (A) is the definition of "alternative operator services." In light of the comments on proposed rules 11 and 22 below, this definition should be eliminated.

Division (L), which is the definition of "exchange," is borrowed from the Act's language in R. C. § 4927.12(A). Interestingly, the federal Telecommunications Act of 1996 does not define the term "exchange" even though that term is used widely in that act. The proposed definition in division (L) could apply to a specific local calling area or even a local exchange telephone company's entire service territory. This is because both a local service area and a company's entire service territory are "geographical service area[s] established by an incumbent local exchange carrier and approved by the commission." AT&T recommends a minor edit to address this problem and to reflect the common usage of the term, as follows:

(L) "Exchange area" means a geographical service area[s] established by an incumbent local exchange carrier **as an exchange** and approved by the commission.

Using this language, other "geographical service areas," such as a local calling area or a company's entire service territory, would be distinguished from an "exchange" because the former would not be designated as "an exchange" while the latter would be. This would fulfill the legislative intent.

4901:1-6-02 Purpose and Scope

In division (B), the reference to 4901:1-6-19, lifeline requirements for ETCs, should be clarified to include the parenthetical "(where the wireless service provider has attained ETC status)." If left alone, this provision could suggest that wireless service providers are required to become, or by default are, ETCs. The clarification recognizes that some wireless service providers could become ETCs and, therefore, be subject to the lifeline requirements, but that not all wireless service providers are ETCs.

Based on the discussion at the workshop held on August 5, 2010, AT&T understands that the waiver provision in division (E) contains the required "boilerplate" language for such a provision. However, the Commission should make clear that it may waive a statutory requirement where it is given explicit authority to do so. In several provisions of the Act, it is given that authority. *See, e.g.*, R. C. §§ 4927.06(A)(1) - (2), 4927.08(C), and 4927.11(C).

AT&T suggests the following change to this provision:

(E) The Commission may, upon application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute **from which no waiver is permitted**, for good cause shown.

4901:1-6-03 Investigation and Monitoring

The proposed rule appears to reflect a continuation of the Commission's "general supervision" in a manner that is inconsistent with the Act, as discussed in the introduction. As noted, the Act contemplates a reduction in the Commission's general supervision of telephone companies and the telecommunications services they provide. It also contemplates a less

intrusive, and more incident-specific, enforcement model. If the language of this proposed rule is adopted, it must be understood to be operative only within the confines of the Act's limitations on the Commission's powers. To this end, AT&T suggests the following change to the introductory phrase: "Consistent with applicable law, nothing contained in this chapter precludes the commission or its staff from"

4901:1-6-04 Application Process

Proposed division (A)(3) diverges from the current practice and would impose the unnecessary and burdensome requirements that the telecommunications application form be signed by an officer and notarized. The proposed requirements would not add value or improve the process. The current Telecommunications Application Form contains an "affidavit" section (required to be completed for tariff-affecting filings only) and a "verification" section. Neither section requires notarization. The "affidavit" section contains the following statement: "I declare under penalty of perjury that the foregoing is true and correct." To impose the requirements that the form must be signed by an officer and must be notarized would add to the bureaucracy and the expense of what should be routine filings. R. C. § 2921.13 prohibits falsification in a document like the Telecommunications Application Form. For all of these reasons, the format of the current form should be maintained.

4901:1-6-07 Content of Customer Notice

Division (A) of this proposed rule improperly expands the requirements of R. C. § 4927.17 to include providing a copy of any customer notice, relative to any material change in the rates, terms, and conditions of a service or any change in the company's operations that are not transparent and may impact service, to the Commission and to the Office of Consumers' Counsel ("OCC"). The law requires notice to "affected customers" and does not include notice to the two state agencies in its requirements. R. C. § 4927.17. To require a copy of each customer notice to be provided to both agencies will continue a costly and burdensome bureaucratic process that the Act was intended to eliminate. No valid purpose is served by imposing such a requirement. The Act is intended to reduce regulatory burdens and this requirement would increase them.

As recognized at the workshop held on August 5, 2010, the filing of an application should be sufficient notice to both the Staff and to OCC that a filing has been made. All such applications are available on the Commission's Docketing Information System, accessible to anyone with internet access. At a minimum, the Commission should not impose a separate requirement to provide a copy of the customer notice if that notice is included in a docketed filing.

Division (A) of the proposed rule should also be modified to reflect that its application is limited to "telecommunications services," consistent with the definitions in proposed rule 1(FF) and in R. C. § 4927.01(A)(12). The Commission has no authority over other services, given the limitation on its power in R. C. § 4927.03(D).

Even if the requirement to provide notice to the two state agencies is retained, however, proposed rule 4901:1-6-07 is not consistent with the specific notice provision in proposed rules 4901:1-6-14(F)(5) and 4901:1-6-14(G)(3); at the very least, the three provisions should be harmonized. For example, division (A) of 4901:1-6-07 provides for "at least fifteen days advance notice," with certain types of notice excepted. Divisions (F)(5) and (G)(3) call for the notice relative to increases in an ILEC's or CLEC's BLES rates to be provided in accordance with rule 4901:1-6-07. Divisions (A) and (B) of that rule, however, address notices which are to be provided at least fifteen days in advance to affected customers and require providing them to the Commission at either the time of the filing of an application or coincident with the notice given to customers. Proposed rules 4901:1-14(F)(5) and (G)(3) require the notice be provided to the Commission Staff (but not OCC) "no later than the date it is provided to customers."

In division (B), the proposed rule includes a requirement to provide a notarized affidavit concerning the customer notice. This is not required by the Act and imposes an unnecessary and burdensome requirement. For the reasons discussed in connection with proposed Rule 4 above, this proposal should not be adopted.

In division (D), the reference to "electronic mail" should be changed to "electronic means" in order to recognize the wide variety of communications options used in commerce today.

The overlapping and potentially confusing elements of this proposed rule could be easily addressed by modifying section 4901:1-6-07(A) to read:

(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 TELECOMMUNICATIONS service and any change in the company's operations that are not transparent to customers and may impact service.

modifying 4901:1-6-07(B) to read:

*(B)... A telephone company shall provide to the commission at the time of the filing of an application, if applicable, or coincident with the notice given to customers, **WHICHEVER IS EARLIER**, a copy of the actual customer notice ~~and a notarized affidavit verifying that this customer notice was provided to affected customers.~~*

adding new division (C) after proposed division (B) as follows:

(C) A copy of the customer notice must be provided to the commission staff by e-mailing the text of the customer notice to a commission-provided electronic mail box at Telecomm-Rule07@puc.state.oh.us.

relettering proposed divisions (C) through (G) as (D) through (H)

modifying proposed division (D) as follows:

(E) 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~~ MEANS.

modifying 4901:1-6-14(F)(5) as follows:

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.~~

and modifying 4901:1-6-14(G)(3) as follows:

A CLEC may increase its BLES rates on no less than thirty days' written notice to affected customers and 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.

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

Proposed division (B)(2) appears to have been lifted from the Commission's current rule for CLEC certification (O.A.C. § 4901:1-6-10(H)(2)) and the proposed rule on telephone company certification, Rule 8(C). Since CLECs and CESTCs are not the same, the term "telephone company," used in proposed division (B)(2), should be changed to "CESTC" to avoid any confusion.

4901:1-6-11 Tariffed Services

In division (A)(1)(g), the proposed rule requires "excess construction charges" to be tariffed. This requirement is beyond the scope of the Commission's authority - - even as to basic local exchange service - - under R. C. § 4927.15. And, as discussed below in connection with proposed rule 33, the proposed restrictions on excess construction charges, even though limited to BLES, are also beyond the Commission's authority to adopt.

In division (A)(1)(h), the proposed rule requires both alternative operator services ("AOS") and inmate operator services ("IOS") to be tariffed. However, R. C. § 4927.18 preserves Commission authority over IOS, but not AOS. The current AOS/IOS rule (4901:1-6-18) and its related definitions in 4901:1-6-01 were among the rule provisions that will not be rescinded by operation of Section 3 of the Act. The current rule speaks to both subjects. But it

was clearly the intent of the General Assembly to preserve only the IOS provisions of the rule, consistent with the continuation of the Commission's authority over IOS. The AOS provisions of the rule should be removed, because the Commission will no longer have rate authority over AOS. The Commission will still have some authority over AOS, consistent with its authority over telecommunications services generally, but not rate-setting or rate review authority over AOS.

It bears repeating that the reference to "commission oversight and regulation" in division (A)(2) must be understood in the context of the new limitations on the Commission's authority and, especially, the limitation on its "general supervision" as discussed above.

4901:1-6-12 Service Requirements for BLES

In division (C)(10), the proposed rule requires that the disconnection notice "identify the minimum dollar amount to be paid to maintain BLES" However, under the statute, "a telephone company may disconnect basic local exchange service for nonpayment of *any amount past due* on a billed account" R. C. § 4927.08(B)(5)(emphasis added). "Any amount past due" is not limited to BLES or any other service by the statute. It includes any amount past due on the bill. Thus, the telephone companies providing BLES need not isolate the BLES charges in order to proceed with the disconnection of BLES (or other services); nor do they need to identify the BLES charges in the disconnection notice if they choose to exercise their statutory right to disconnect BLES for nonpayment of any amount past due on a billed account. Depending on a telephone company's practices, the minimum amount required to retain

BLES could be equal to the total amount on the bill. This provision of the draft rule is inconsistent with the Act and should not be adopted.

4901:1-6-14 BLES Pricing

Division (B)(3) of the proposed rule, which states that "The BLES pricing flexibility set forth in this rule is only applicable to the network access line component or equivalent of a primary BLES line," is problematic in its reference to "a primary BLES line."

This is confusing because there is no such thing as "primary" BLES line in the new regime. BLES is defined in the Act as:

a single line to a residential end user

or

a primary line to a small business end user³

R. C. § 4927.01(A)(1). In the case of residential service, the presence of two or more lines precludes either one from being BLES, by definition. There is no such thing as a "primary BLES line" in the residential setting. In that setting, BLES can only be a single-line account. Nor is there an "additional" BLES line in either the residential or small business setting. Therefore, the word "primary" should be deleted from this provision. The proposed rule should also be clarified such that the pricing restrictions only apply to the monthly recurring rates for BLES, consistent with the Act.

³ A "small business," in turn, is defined as a nonresidential service customer with three or fewer service access lines. R. C. § 4927.01(A)(9).

For these reasons, division (B)(3) of the proposed rule should be clarified to state: "The BLES pricing flexibility set forth in this rule is only applicable to the monthly recurring rate for the network access line component of BLES."

While AT&T agrees with the apparent intent of division (B)(5) of this rule, the language could be improved by deleting the introductory phrase, "BLES which is part of" This is because, by definition, BLES cannot be part of a bundle or package of services, as defined. R. C. § 4927.01(A)(1) and (2). An access line can be part of a bundle or package of services, but BLES cannot.

In division (C)(1), a requirement to notify the OCC of a BLES rate increase is included. This requirement goes beyond the statute, which specifically requires that such notice only be provided to the Commission and to affected customers. R. C. § 4927.12(B).

For clarity, in division (C)(1)(c), the reference to "competing service to the BLES offered by *an* ILEC" should be changed to "competing service to the BLES offered by *the* ILEC." There is only one ILEC in each exchange, and the proposed rule's language suggests that there could be more than one. The focus of the inquiry is on "the" ILEC providing service in the exchange in question.

The requirement in division (F)(2) of the proposed rule to annually file changes to the tariffed cap for BLES is a new one. Rather than dictate an explicit requirement for an annual filing, the rule should be amended to allow flexibility for companies to administer their tariffs

based on their unique circumstances which may or may not require an annual filing. This could be easily addressed by editing (F)(2) as follows:

(F)(2) A for-profit ILEC's TARIFF shall REFLECT THE ALLOWABLE ~~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, IN A MANNER AGREED UPON BETWEEN THE ILEC AND THE COMMISSION STAFF, AND WHEN NECESSARY. ~~Such ILECs shall file annual changes to it tariffed cap for BLES, in those exchange areas with BLES pricing flexibility, FILED as a zero-day tariff amendment (ZTA).~~

Division (H)(2) of the proposed rule suggests that nonrecurring service charges, surcharges, or other fees associated with BLES are subject to the tariff filing requirements and to a "standard of reasonableness." Similarly, division (J) would cap ILEC nonrecurring service charges for the installation and reconnection of BLES. Moreover, the proposed rule contains what appears to be a *permanent* cap.

Nowhere in the Act can the authority for this proposed language be found. The Act simply requires that the "rates, terms, and conditions for basic local exchange service *and for installation and reconnection fees for basic local exchange service* shall be tariffed *in the manner* prescribed by rule adopted by the commission." R. C. § 4927.12(F)(emphasis added). Through this language, the Act requires that installation and reconnection fees be tariffed, but it grants the Commission no price-regulation authority over these fees. In using the phrase "in the manner," the Act allows the Commission to specify "how" these fees appear in the tariff, and the mechanics of how such fees can be altered, but gives it no authority over the determination of the level of those fees. That is left to the marketplace of competitive telecommunications services and providers. A customer who is dissatisfied with a LEC's installation or reconnection fees can complain to the LEC and can, ultimately, select another carrier. That is a function of the market-

based pricing that the Act envisions for these, and many other, services. In addition to these legal infirmities, division (J) unfairly addresses only the charges levied by the ILECs, and not those of the CLECs that offer BLES. For all of these reasons, division (H) should be modified by eliminating the “standard of reasonableness” qualification and by allowing for the filing of a zero-day, notice only application; while division (J) should not be adopted.

It is even more of a stretch to suggest, in division (I), that "late payment charges for BLES" are subject to the Commission's rate-regulation authority. The statute does not give the Commission such power. It bears repeating, as noted in the Introduction:

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

R. C. § 4927.03(D) (emphasis added). The Commission retains no authority over late payment charges, whether they apply to regulated services such as BLES, or deregulated or detariffed services. In the case of AT&T Ohio (and likely many other LECs), late payment charges apply to the entire bill, not just to the BLES or other discrete services that may be included in that bill. For these reasons, division (I) should not be adopted.

4901:1-6-15 Directory Information

Division (A) of the proposed rule defines the geographic scope of the directory and would dictate specific information that must be included in the directory. In both respects, the proposed rule goes beyond the Commission's authority under the Act. BLES includes "[p]rovision of a telephone directory *in any reasonable format* for no additional charge and a listing in that directory, with reasonable accommodations made for private listings." R. C. §

4927.01(A)(1)(b)(vi)(emphasis added). BLES also includes "[a]ccess to operator services and directory assistance." R. C. § 4927.01(A)(1)(b)(v). Nowhere does the Act specify the required geographic scope or the contents of the telephone directory, direct the availability of free directory assistance in any circumstance, or require that a printed directory be provided to any customer. And, nowhere does the Act give the Commission the authority to impose such requirements. Rather, these are matters that the Act leaves to the local exchange carriers' discretion and to the competitive marketplace. The proposed rule is a holdover from current MTSS Rule 3 (O.A. C. § 4901:1-5-03), a rule that will be rescinded under Section 3 of the Act. The proposed requirements far exceed those that the statute prescribes. The fact that the General Assembly targeted the current rule for rescission demonstrates its intent that the onerous requirements that go beyond the statutory provisions on directories and access to directory assistance were not to be continued. The two proposed provisions should not be adopted.

In connection with the requirement for the telephone companies providing BLES to provide "reasonable accommodations" for private listings, the Commission should clarify that the intent was to continue the status quo on private and semi-private listings (sometimes referred to as "non-published" and "unlisted" numbers), but with no pricing restrictions.

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

The proposed rule includes more than it should while excluding an important provision that should be included. It goes well beyond the statutory requirements without justification or even explanation. R. C. § 4927.06 is the operative statute, and the Commission need not, and should not, repeat the text of that statute in the rule because it is self-executing. In

repeating some of the statutory language, though, the proposed rule adds requirements which are not included in - - or even contemplated by - - the statute. For example, the proposed requirement to "visit the customer premise (sic) at no charge to diagnose whether service difficulties exist with network wire or inside wire" where a NID is not in place, goes beyond the requirements of the statute. Proposed division (B)(4). The Act requires the company to, among other things, inform its customers about the use of a NID and of any charges the company imposes for a diagnostic visit. R. C. § 4927.06(A)(3). The Act does not regulate diagnostic visit charges and does not give the Commission the authority to do so, or to specify circumstances where those charges are waived, even as to BLES. The offending provision should not be adopted.

In division (B)(1)(b), the proposed rule requires exclusions, limitations, and the like to be "located in close proximity to the operative words in the solicitation, offer, or marketing materials." This requirement, too, impermissibly adds to the statutory requirements. It should be eliminated.

Divisions (D), (E), and (F) of this proposed rule should not be adopted for similar reasons. There is no statutory authority for imposing the requirement of division (D). Moreover, the Commission previously ruled that this requirement should no longer apply to telephone companies in the latest revision to the public utility credit and deposit rules. *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative*

Code, Case No. 08-723-AU-ORD, Finding and Order, December 17, 2008, p. 5. Divisions (E) and (F) simply repeat federal requirements and are, therefore, not necessary.

The Act envisions the specified "acts and practices" in R. C. § 4927.06 to be the baseline. With experience in the future, the Act allows the Commission to specify other prohibited acts or practices, pursuant to R. C. § 4927.06(A)(4). The thought here was that acts or practices might arise in the future that will need to be addressed. The Act did not contemplate the Commission including other acts and practices in the initial rules to implement the Act. It was clearly not intended that the Commission would continue many legacy rules and requirements in initially adopting the rules to implement this section. To do so would be contrary to one of the express purposes of the Act to rely primarily on market forces - - and not the heavy hand of regulation - - to maintain reasonable service levels for telecommunications services at reasonable rates. R. C. § 4927.02(A)(3). To impose these requirements would also be contrary to the express directive that requires MTSS Rules 3 (including its appendix) and 4 to be rescinded. Act, Section 3. Several provisions of the proposed rule are adopted from those current rules in a manner not permitted by the Act.

The Commission, therefore, should not adopt the proposed rule. It should, however, provide for (or at least acknowledge) the "review process" contemplated in R. C. § 4927.06(A)(1) and (2) to determine when disclosing the specified information is not practicable.

4901:1-6-19 Lifeline

Division (G) of the proposed rule mirrors R. C. § 4927.13(A)(4) and (B). In requiring the tariffing of lifeline, the Commission should recognize that BLES must be provided by the ILECs and will continue to be tariffed. It should be sufficient to explain in the tariff the terms and conditions for lifeline and how the lifeline rate is established. As the Commission is aware, the “rate” for lifeline service is the result of the application of the relevant discounts to residential service charges, both recurring and non-recurring. The tariff need not state the lifeline “rate” to make this clear. Moreover, customers have a choice of numerous services, in addition to BLES, to which the lifeline discount may be applied.

Division (F) improperly delegates to the Commission Staff the power to "make the final determination" in matters addressed by the lifeline advisory board if consensus among the members of the lifeline advisory board is not possible. This delegation of authority to the Staff is inconsistent with the Act, which gives the Commission (and not its Staff) the power to review and approve decisions of the advisory board, including decisions on how the lifeline marketing, promotion, and outreach activities are implemented. R. C. § 4927.13(A)(3)(a). The offending sentence should be removed.

Division (F) also references "the assistance of the office of the consumers' counsel" in a manner not contemplated in the Act. The OCC is but one member of the single, statewide lifeline advisory board, and it has no special duties or role in that regard. To single the OCC out to "assist" the Commission's Staff in this regard appears to diminish the authority of the other members of the advisory board. The offending provision should be deleted.

Lastly, the second sentence of division (S) of the proposed rule should not be adopted. This sentence appears to expand the ability of the Staff to request data related to lifeline service that goes well beyond the requirements of the Act. The Act simply requires each ILEC that is required to provide lifeline service to "annually file with the public utilities commission a report that identifies the number of its customers who receive, at the time of the filing of the report, lifeline service." R. C. § 4927.13(E). The Act gives the Commission no authority to expand this reporting requirement.

4901:1-6-20 Discounts for Persons with Communications Disabilities

This proposed rule has numerous problems. R. C. § 4927.14 allows, but does not require, the Commission to adopt rules requiring telephone companies that are toll service providers to offer discounts for operator-assisted and direct-dial services for persons with communication disabilities. At the outset, the Commission should consider whether these discounts need to be continued. The Commission should consider instituting another proceeding, in which it specifically solicits comments on the prospective need for such discounts from the user community, the affected telephone companies, and other interested parties before adopting such a rule. The existence of vibrant competition for long distance services and the availability of numerous alternatives, including flat-rate toll calling packages, VoIP service, e-mail, texting, wireless, and TRS, call into question the need to continue of the current discount requirements.

However, if the Commission decides to adopt a rule now, division (A)(1) of the proposed rule should be expanded to reflect the three options available for applying the discounts to basic message toll service under the current rule. AT&T Ohio has implemented the

40/60/70% discounts permitted by the first option in CTS Rule 5 (O.A.C. § 4901:1-6-05(H)(1)(a)). To require any provider to incur the expense necessary to conform to the “straight seventy percent discount” provided as the second option in that rule, the only option carried over into the proposed rule, would not be in the public interest.

Moreover, the discounts contemplated by the statute apply only to toll service since the statute uses the term “toll service provider.” No current Commission rule requires free directory assistance to be provided to persons with communication disabilities. Some telephone companies provide free directory assistance to such persons as a matter of policy. Under the Act, no telephone company is required to provide directory assistance. Only *access to* operator services and directory assistance is required as a component of BLES. R. C. § 4927.01(A)(1)(b)(v). It is simply improper to require a service which is not required to be provided at all, to be offered for free to any class of customers. The fact that the service is not required to be provided at all demonstrates that the marketplace is sufficient in fulfilling consumers’ needs, including those with communication disabilities. Moreover, the requirement to provide free directory assistance appears to exceed the Commission’s authority in another respect in that it does not limit its application to intrastate services.

For all of these reasons, the Commission should defer adoption of the proposed rule until the need for it can be further assessed. Alternatively, the proposed rule requiring the provision of free directory assistance should not be adopted and the proposed rule on basic message toll service discounts should be modified as suggested to include the three discount

options under the current rule. Requiring the provisioning of free directory assistance would be to continue the "command and control" style of regulation that the Act has eliminated.

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

As noted in the comments on the definitions in proposed rule 4901:1-6-01 and the tariffing rule, proposed rule 4901:1-6-11, this proposed rule should be amended to reflect the explicit limitation on the Commission's authority.

The proposed rule purports to govern both alternative operator services ("AOS") and inmate operator services ("IOS"), requiring both to be tariffed. As previously discussed, however, R. C. § 4927.18 preserves Commission authority over IOS, but not AOS. The current AOS/IOS rule (O.A.C. § 4901:1-6-18) and its related definitions in O.A.C. § 4901:1-6-01 were among the rule provisions that will not be rescinded by operation of Section 3 of the Act. The current rule speaks to both subjects. But it was clearly the intent of the General Assembly to preserve only the IOS provisions of the rule, consistent with the Commission's authority over IOS. The AOS provisions of the rule should be removed, because the Commission will no longer have rate authority over AOS. The Commission will still have some authority over AOS, such as the prohibitions against unfair or deceptive acts or practices, consistent with its authority over telecommunications services generally, but not rate-setting or rate review authority over AOS. For these reasons, all of the provisions concerning, and references to, AOS in the proposed rule should be deleted.

4901:1-6-26 Abandonment

Proposed division (A)(8) appears to create a loophole through which an “abandoning” carrier could insist on the continuation of service even if it refused to pay for that service. This provision should be qualified with the addition of an introductory phrase, as follows: “*Except in the case of disconnection for non-payment*, 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.”

4901:1-6-31 Emergency and outage operations

In this rule, the Staff would unnecessarily complicate what should be a straightforward matter. The Act gives the Commission the authority to carry out “[o]utage reporting consistent with federal requirements.” R. C. § 4927.04(G). There is no need to specify all the criteria for outage reporting in this rule. At most, the Commission should direct the telephone companies to supply to the Staff any outage reports that they provide to the FCC. This will help ensure consistency with federal requirements, as required by the Act. This approach would also not run the risk, presented by the proposed rule, of imposing state requirements that are inconsistent with the applicable federal requirements.

Divisions (F) and (G) of the proposed rule go beyond the Commission's statutory authority and should not be adopted. These provisions repeat provisions in MTSS rule 13 (O.A.C. § 4901:1-5-13), one of the rules slated for rescission under Section 3 of the Act. While the Act gives the Commission authority over outage reporting, consistent with federal

requirements, it does not give the Commission authority to continue to dictate policies governing the telephone companies' emergency operations.

4901:1-6-33 Excess Construction Charges

The proposed rule on excess construction charges has the same infirmity as the proposed restrictions on non-recurring charges discussed in connection with proposed rule 14: it is beyond the Commission's authority. Therefore, it should not be adopted.

Conclusion

As explained in these comments, there are several areas in which the proposed rules exceed the Commission's statutory authority under the Act. In those cases, the Commission should not adopt the proposed rules. The Commission should, however, adopt the suggestions made in these comments to improve the proposed rules. In this manner, the Commission will properly implement the provisions of the Act, in keeping with the intent of the General Assembly.

Respectfully submitted,

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