

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Adoption of</b>	<b>:</b>	
<b>Rules to Implement Substitute</b>	<b>:</b>	<b>CASE NO. 10-1010-TP-ORD</b>
<b>Senate Bill 162</b>	<b>:</b>	

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**INITIAL COMMENTS  
OF THE  
OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

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Pursuant to the July 29, 2010 Entry, the Ohio Cable Telecommunications Association (the "Association" or the "OCTA") submits these Initial Comments. The OCTA, a trade association of cable telecommunication operators located throughout Ohio, appreciates the opportunity to provide input into these rules.

Some of the Association's members offer, or may in the future offer, telephone service using a switched network, offer or may offer telephone service through internet protocol-enabled services or broadband or utilize the services or facilities of incumbent local exchange carriers (ILECs) or competitive local exchange carriers (CLECs) in offering these services for transport and termination. Some of the OCTA members utilize pole attachment and conduit occupancy services offered by ILECs. Therefore, the Association, on behalf of its members, is an interested person and offers these Initial Comments. While the OCTA will offer comments on many of the rules proposed by the

Commission's staff, its failure to comment on a rule does not necessarily reflect its endorsement of any of the proposed rules.

## **I. Comments on Specific Rules**

### **A. Proposed Rule 4901:1-6-01 – Definitions**

Customer - The inclusion of “end user” in the definition of “customer” creates an ambiguity. First, it is unclear whether “end user” is intended to modify the meaning of “person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. as described in the definition. Second, throughout the rules, the staff has proposed language that alternates among the terms “customer”, “end user customer” and “wholesale customer” whereas only “customer” is specifically defined. These inconsistent references to “customer” amplify the ambiguity created by including “end user” in the definition. The OCTA recommends a change to the definition to clarify that the term “customer” includes both wholesale and end user customers. This would then allow the Commission to ensure accuracy in the application of the various rules by adding “end user” or “wholesale” before “customer” in those rules where such limitation is intended.

Based on this, the following revision is recommended for the definition of “customer” (additions shown with double underline and deletions shown with double strike through):

**“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 rules and regulations of the telephone company or obligations in an interconnection agreement or commercial contract and includes both end user and wholesale customers unless otherwise limited in a commission rule.

#### **B. Proposed Rule 4901:1-6-02 – Purpose and Scope**

Under subsection (C) of this proposed Rule, providers of interconnected VoIP service are exempt from all proposed Rules in Chapter 4901:1-6 except those specified in proposed Rule 4901:1-6-36 relating to telecommunications relay services (“TRS”) assessment procedures. However, under subsection (D) of this proposed Rule, providers of telecommunications services that are not commercially available as of September 13, 2010 and that employ technology that became available for commercial use only after September 13, 2010 (hereinafter in these comments referred to as “New Telecom Services”) would not be subject to any of the Proposed Rules in Chapter 4901:1-6, including the TRS assessment requirements specified in Rule 4901:1-6-36. The OCTA recommends that the Commission consider adding a requirement that, to the extent that a New Telecom Service is required under federal law to provide to its customers access to TRS, the Commission may determine that the New Telecom Services will be required to comply with Rule 4901:1-6-36.

### **C. Proposed Rule 4901:1-6-04 – Application process**

Subsection (A)(3) reflects a change in the current practice when filing applications by specifying that telecommunications applications must be signed by an officer and notarized and must identify any agents or employees authorized to make filings for the applicant. This provision does not exist in the current rules, nor is it required by Substitute S.B. 162. The OCTA believes it is sufficient to require, as specified in subsection (A)(2) that applicants complete any application form in its entirety and supply all required attachments and affidavits. This would provide the Commission with the flexibility to create forms, require information that is necessary for a specific application and document appropriate authorization and commitment without burdening equally all applications and forms with the requirement of officer signature and notarization. Therefore, the OCTA would recommend deleting subsection (A)(3) of Proposed Rule 4901:1-6-04

### **D. Proposed Rule 4901:1-6-06 – Suspensions**

This Rule grants authority to the Commission, legal director, deputy legal director or an attorney examiner to impose full or partial suspensions of any automatic approval process or notice filing or tariff approved pursuant to Chapter 4901:1-6. Subsections 4901:1-6-06(B) and (D) apply to tariff filings and tariffed telecommunications services and suspension if the tariff violates the Commission rules or regulations.

The OCTA believes that staff inadvertently left out violations of Title 49 in its references to the bases for imposing a suspension. Therefore, the OCTA recommends that the first line of subsection (B) and the last line of subsection (D) be revised as follows (additions shown with double underline):

(B) [first line]: “Under this rule, if a tariff filing is contrary to Title 49 or the rules and regulations of the commission, the commission ....”

(D) [last line]: “....violation of Title 49 or commission rules and regulations.”

#### **E. Proposed Rule 4901:1-6-07 – Content of Customer Notice**

This proposed Rule provides for the timing and content of “customer” notices and points out the reason for the suggested revision to the definition of “customer”. In subsections (A), (B), (F) and (G) the reference is merely to “customer”, but in subsections (C), (D) and (E) there is specific reference to “end user customers.” If the suggested revisions to the definition of “customer” proposed by the OCTA are adopted, then the use of “customer” in this proposed Rule is acceptable to the OCTA.

Subsection (G) provides that the Commission staff can require re-notice to customers if a notice does not comply with the Commission rules. The OCTA would recommend the following revision to Subsection

(G) to allow re-noticing if a notice does not comply with Title 49

(additions shown with double underline):

(G) In the event that the commission staff determines that a notice provided to customers is not consistent with Title 49 or commission rules, the commission staff may require the company to re-notice customers.

#### **F. Proposed Rule 4901:1-6-08 –Telephone Certification**

Based on definitions in proposed Rule 4901:1-6-01 and proposed Rule 4901:1-6-02, companies providing telecommunications services solely through broadband, information services, advance services, interconnected voice over internet protocol-enabled service or New Telecom Services will no longer be required to obtain a certificate from the commission. Historically, some ILECs have required that competitive service providers be certified as local exchange carriers before the ILEC will negotiate or enter into an interconnection agreement with them. However, the Telecommunications Act of 1996 does not require that a competitive service provider must receive state certification before an ILEC is obligated to negotiate or enter into an interconnection agreement with that prospective provider. To reflect that there is no certification obligation for providers of broadband, information services, advance services, interconnected voice over internet protocol-enabled telephone services or New Telecom Services, the OCTA recommends that the

Commission include the following new subsection (J) to proposed Rule 4901:1-6-08:

(J) If a provider of telecommunications services is not required to obtain a certificate from the commission to provide services in this state pursuant to this rule, neither the commission nor any ILEC or CLEC shall impose a requirement of proof of or certification on the provider solely to commence negotiations for or enter into an interconnection agreement with the provider.

**G. Proposed Rules 4901:1-9-10 – Competitive Emergency Services (CESTC)**

This rule provides the process for an entity that is not an ILEC to obtain certification to provide 9-1-1 service and the obligations of the CESTC and compliance with PSAP obligations. The OCTA merely points out what appears to be a typographical error in subsection (B)(2) of this proposed Rule, which references certification as a “telephone company” rather than certification as a “CESTC”.

**H. Proposed Rule 4901:1-6-11 – Tariffed Services**

The language in this rule is consistent with the tariffing requirements in Sub. S.B. 162. Pole attachments, conduit occupancy, carrier access and N-1-1 are among the services that must be tariffed. Because the term “CESTC” is created in the proposed staff Rules, the OCTA would suggest a revision in the first line of subsection (A)(1) to make the rule consistent with the newly defined term. On this basis, the

OCTA would suggest the following revision (added language shown with double underline and deleted language shown with double strike through):

(A)(1) [first line] “The rates, terms and conditions for 9-1-1 service provided in this state by a telephone company or a ~~telecommunications carrier~~ CESTC, .....”

#### **I. Proposed Rule 4901:1-6-12 – Service Requirements for BLES**

Only ILECs are required to provide Basic Local Exchange Service (BLES) under Substitute S.B. 162. This proposed Rule references LECs providing BLES and could leave the impression that such provisioning is required. Therefore, the OCTA would recommend that the first line of subsection (A) and the first line of subsection (C) be revised to read as follows (added language shown with double underline and deleted language shown with double strike through):

(A) [first line] “A local exchange carrier (LEC) choosing to provide ~~providing~~ basic local exchange service (BLES) shall conduct ....”

(C) [first line] “A LEC choosing to provide ~~providing~~ BLES shall provide it pursuant to the following standards.”

#### **J. Proposed Rules 4901:1-6-25 – Withdrawal of Telecommunications Services**

This proposed Rule provides the means by which a telephone company may cease offering any telecommunications service through notice of withdrawal. It does not apply to BLES provided by an ILEC,



pole attachments, conduit occupancy or interconnection and resale agreements. The OCTA suggests that it would be beneficial to have the proposed Rules address the distinction between withdrawal of BLES by an ILEC in this rule and the request for a waiver from providing BLES that is addressed in proposed Rule 4901:1-6-27.

In subsection (C), the proposed Rule indicates that a LEC that is ceasing to offer a telecommunications service is to provide a list of assigned area code prefixes and thousand blocks, which are then to be reassigned. The OCTA requests some clarifying language in the proposed Rule with respect to the area code prefixes and thousand blocks. In this regard, the OCTA would request the following revisions to the first three lines of subsection (C) (added language shown with double underline and deleted language shown with double strike through):

(C) (first three lines) “Where applicable, a local exchange carrier ceasing to offer all telecommunications service in an exchange 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~~ such telecommunications service, wherein the telephone company’s area code....”

#### **K. Proposed Rule 4901:1-6-26 - Abandonment**

This rule applies to a telephone company seeking to abandon all telecommunications services and requires filing an abandonment application and a cancellation of its certificate of operation. The

telephone company must provide 30 days advance notice to its retail and wholesale customers and to the company from which it obtains wholesale services. However, the proposed Rule provides that if the telephone company abandoning its telecommunications services has no retail customers, no notice is required to any customer. This rule does not apply to BLES provided by ILECs, but it appears the proposed Rules are silent on how an ILEC might abandon BLES, unless it is through a waiver process. The OCTA recommends that the last sentence of subsection (A)(3) be removed in its entirety as it is inconsistent with the first sentence of this subsection which requires notice to wholesale customers in the event of abandonment of all services.

**L. Proposed Rule 4901:1-6-36 – TRS Assessment**

As indicated in section B, above, the OCTA recommends that the Commission add a requirement that, to the extent a New Telecom Service is required under federal law to provide to its customers access to TRS, the Commission may determine that New Telecom Service will be required to comply with Rule 4901:1-6-36. Should the Commission accept this recommendation, then subsection (B) of proposed Rule 4901:1-6-36 should be revised as follows (added language shown with double underline):

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 and other services that are competitive with or functionally equivalent to voice-grade, end user access lines and subsequently required under federal law to provide to its customers access to TRS should the commission determine compliance with this rule is necessary. For purposes of this rule, advanced services and Internet protocol-enabled services have the meanings ascribed to them by federal law,

#### **M. Proposed Rule 4901:1-6-37 – Assessments and Annual Reports**

Under subsection (B) of this proposed Rule, telephone companies subject to R.C. 4905.71 are to provide information in their annual reports as required by the commission to calculate pole attachment and conduit occupancy rates. The OCTA believes there needs to be more specificity in this rule to ensure the proper information is available. Based on this, the OCTA would recommend the following revisions to subsection (B) (added language shown with double underline):

(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

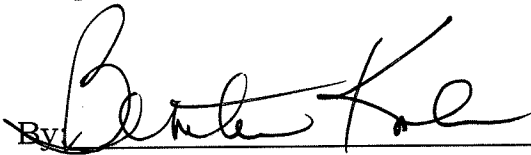
of the Revised Code, shall provide in their annual report information required by the commission to calculate pole attachment and conduit occupancy rates. This shall include information necessary to calculate the net investment per bare pole (gross pole investment, accumulated depreciation, deferred taxes and value of pole appurtenances and fixtures that will not be used by the attaching entity), the next linear cost per foot (gross investment, accumulated depreciation, deferred taxes and total system conduit length) the carrying charge (maintenance and administrative costs, taxes and percentage of expense to net plant in service) and the total number of poles in service 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.

## **II. Conclusion**

The OCTA understands and appreciates the time and effort the Commission staff put into drafting these proposed rules. It also appreciates the opportunity to provide input into the staff proposed rules for the implementation of Substitute Senate Bill 162. The OCTA asks the Commission

to revise or clarify the proposed rules as specifically recommended in these Initial Comments.

Respectfully submitted,

By   
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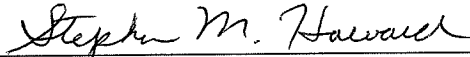
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Initial Comments of the Ohio Cable Telecommunications Association has been and will be served via electronic mail or via hard copy pursuant to the July 29, 2010 entry in Case No. 10-1010-TP-ORD.

  
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Stephen M. Howard

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Summary: Comments Initial Comments of the Ohio Cable Telecommunications Association electronically filed by Mr. Stephen M Howard on behalf of Ohio Cable Telecommunications Association