

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

REPLY COMMENTS OF THE OHIO TELECOM ASSOCIATION

THE OHIO TELECOM ASSOCIATION, for and on behalf of its members (“OTA”), hereby submits its Reply Comments in this matter in accordance with the Commission’s Entry of July 29, 2010 proposing rules (the “Rules”) to implement Substitute S.B. 162 (“SB 162”). These Reply Comments address issues raised by the Ohioans Protecting Telephone Customers (“OPTC”) and the Ohio Cable Telecommunications Association (“OCTA”).

At the outset, OTA's members acknowledge that the current rules are in effect and will remain so until the Rules become effective. OPTC shockingly suggests that Ohio’s incumbent local exchange companies (“ILECs”) would consider not continuing to provide Lifeline services and outreach during the transition between September 13, 2010 (the effective date of SB 162) and the effective date of the Rules. Such suspicion is undeserving and without merit. In any case, OPTC fails to acknowledge that the provision of Lifeline service in Ohio does not hinge solely on the advisory boards and rules established here in Ohio. Lifeline and Link-up services are Federal programs – monitored by USAC. Federal rules require outreach and prescribe the assistance programs and income eligibility requirements that qualify customers for Lifeline service. Ohio does have a state-specific enhanced Lifeline plan that will continue to be in effect for applicable ILECs during the transition period, which will be enhanced upon adoption of the Rules.

4901:1-6-01 Definitions

OPTC has erroneously amended the definition of Alternative Operator Services (AOS), when, in fact, this definition and associated references in 4901:1-6-22 should be eliminated. There was no legislative intent to retain Commission jurisdiction over Alternative Operator Services. As further addressed in OTA's Comments, SB 162 did not authorize the Commission to adopt rules for alternative operator service, which is a competitive service that is not among the services for which the Commission maintains jurisdiction.

SB 162 requires BLES customer bills to be due no less than 14 days after the date of the postmark. In a giant step backward, OPTC has asserted the definition of postmark should require a stamped date on the envelope. The existing MTSS definition, as incorporated into the Rules, has withstood the test of time with current practices generating no customer complaints or issues, as envisioned by the OPTC. Moreover, requiring the postmark to be printed on the envelope is without value if customers have already discarded the envelope before paying the bill. Time and technology have changed the methodology in which bills and correspondence are transmitted and rather than step back in time, the Commission should maintain the status quo and retain the existing definition.

4901:1-6-07 Content of Customer Notice

OPTC is clearly on a quest to ensure that the Office of the Ohio Consumers' Counsel ("OCC") receives copies of all notices required to be provided to the Commission. However, it is the Commission that is the regulatory body with jurisdiction over OTA's members, not OCC. As it is, the Staff has included additional requirements to provide notice to OCC in Rules 7(A), 14(C)(1), 14(D), 14(G)(3), and 25(A)(1), without any statutory authority to do so. OPTC has

now proposed 13 additional notification requirements, all of which similarly exceed the scope of the statutory authority. One of the purposes of SB 162 was to provide regulatory relief, not to create additional requirements and burdens that do not apply to non-regulated service providers. As such, SB 162 does not require customer notices to be provided to the OCC; accordingly OPTC's suggestions should not be adopted. While one such request may seem simple, OPTC's proposed modifications to require such additional notifications result in precisely the type of administrative burden intended to be eliminated by SB 162. OPTC's proposed modifications add unnecessary costs and impose unintended regulation on OTA's members, and therefore, should be denied as inconsistent with legislative intent.

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

Again, OPTC proposes to add more process, rules and requirements, all of which are inconsistent with the regulatory reform adopted by SB 162. OPTC has gone as far as actually recommending specific processes for the Commission to follow. OPTC is overreaching and its proposed modifications to this Rule should be rejected.

Furthermore, OPTC's recommendation that a second, separate statewide advisory board for non-ILEC low income ETCs be created is without merit. The statewide board prescribed by SB 162 is sufficient to address Lifeline issues; there is simply no need for, nor legal authority to support, OPTC's suggestion that another board be created. Moreover, given the competitive nature of the businesses, it would clearly be inappropriate for such competitors to be discussing their marketing strategies with one another.

4901:1-6-11 Tariffed Services

OPTC has proposed adding "installation and reconnection fees" and "Lifeline service" to the list of services that must be approved by the Commission and tariffed. OTA agrees that those

services must be tariffed. However, “installation and reconnection fees” are not subject to Commission approval; any proposal to suggest otherwise should be rejected.

4901:1-6-12 Service Requirements for BLES

OPTC proposes to delete certain exceptions from Rule 4901:1-6-12(C)(2)¹ and (C)(6)² and, instead, require the telephone company to bear the burden of filing a waiver request where certain conditions exist that affect the installation or repair of BLES. OTA disagrees with OPTC and commends the Commission for maintaining existing rules where appropriate. Such exceptions minimize unnecessary administrative activities and reduce regulatory burdens, both of which were goals of SB 162. No changes are warranted to the Rule as proposed.

As previously discussed in regard to OPTC’s proposed modifications to the definition of postmarks, OTA maintains that the current definition and application of a “postmark” continue to be sufficient and, in fact, are in the best interest of customers. OPTC’s proposed modification to Section (C)(7) to require the postmark to be on the envelope is an antiquated notion that should not be adopted.

With respect to Section (C)(9), OTA concurs with the Reply Comments of the AT&T entities. Because SB 162 only addresses disconnection for non-payment, any references to disconnection for reasons other than non-payment should not be included in the Rules.

¹ Rule 4901:1-6-12(C)(2) provides that the requirement to install BLES is not applicable where any of the following exist: a customer or applicant has not met pertinent tariff requirements; the need for special equipment or service; military action, war, insurrection, riot, or strike; or where the customer misses an installation appointment.

² Rule 4901:1-6-12(C)(6) provides that the customer credit in paragraph (C)(5) of this rule is not applicable if the condition or failure to repair occurs as a result of a customer’s negligent or willful act; malfunction of customer-owned telephone equipment or inside wire; military action, war, insurrection, riot, or strike; or customer missing a repair appointment.

4901:1-6-15 Directory Information

SB 162 requires the “Provision 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.” The proposed Rules implement the legislation by allowing OTA’s members to provide a toll-free telephone number for customers to request a free printed residential white pages directory or make available directories in places frequented by the public. OPTC proposes to eliminate the optional approach and to instead, require companies to do both, creating a more comprehensive and burdensome requirement than exists today and one that unreasonably expands the legislative mandate to provide a directory in any “reasonable format.”

As OTA stated in its Comments, this Rule as proposed extends well beyond the Commission’s authority as established in SB 162 relative to the provision of telephone directories. Similarly, OPTC’s comments reach well beyond the statutory requirements. OTA reiterates that this Rule should require the following and nothing more: “A local exchange carrier (LEC) providing basic local exchange service (BLES) shall provide a telephone directory in any reasonable format at no additional charge and a listing in that directory, with reasonable accommodation made for private listings.” The Commission must acknowledge, as it has done before, that with the advent of the various technological advancements and electronic means by which to deliver telephone listing information, the hard copy directory has become a dinosaur.

4901:1-6-19 Lifeline Requirement

OPTC may have caused an unintended consequence by changing the wording in section (B)(2), in a way that could reduce benefits. OPTC has modified the text such that nonrecurring service order charges for establishing service are available once every twelve months per customer, regardless of whether the Lifeline customer changes addresses. The Rule as modified

by OPTC would not require such installation charges to be waived when a Lifeline customer moves to a new address within a twelve month period. Section (B)(2) should remain as proposed.

Other of OPTC's proposed modifications add more administrative effort and regulatory burden to OTA's members in conflict with the intent of SB 162. For example, OPTC suggests public hearings may be necessary for determining the applicability and appropriateness of customer billing surcharges to non-Lifeline customers being instituted to recover allowable Lifeline expenses. The Rule affords adequate oversight by requiring the ILEC ETC to "provide documentation to support its proposed surcharge and its compliance with this rule." Public hearings are not necessary and are not required by statute. The Commission is fully capable of reviewing the documentation for reasonableness and compliance without the added bureaucracy and expense of public hearings.

OPTC further asserts that for the first filing made by 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 fails to provide any rationale for a requiring a longer review period. Given the requirements set forth in the proposed Rule, Staff's proposed thirty-day review period is sufficient time to conduct such a review. Therefore, the Commission should deny the proposed modification.

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

OTA takes this opportunity to clarify that its intent in its Comments was to maintain the status quo, which means allowing telephone companies to offer the current three (rather than two) discount options. OTA inadvertently omitted the third option from its discussion of this Rule in its Comments.

4901:1-6-22 Inmate Operator Service

See OTA's comments herein to Rule 4901:1-6-01. All references to alternative operator services should be deleted from the Rules, therefore OPTC's proposed recommendations should be denied.

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

As OTA has stated previously (and as will be noted in the discussion of the Rules that follow), OPTC suggests changes to numerous Rules that would require OTA's members to provide notice to the OCC as well as to the Commission, and does so again in its comments with respect to Rule 27. Providing additional notice to the OCC is neither necessary nor consistent with the intent of the legislation to reduce regulatory burdens. The Commission is the appropriate regulatory authority in the state of Ohio and as such, is the proper recipient of such notices. OCC is not. Requiring OTA's members to provide additional notice to the OCC goes beyond the statutory requirements and is a suggestion that should not be adopted by the Commission.

4901:1-6-28 Bankruptcy

See OTA's comments to proposed Rules 4901:1-6-07 and 4901:1-6-27. The Commission should deny OPTC's proposal to require OTA's members to provide notice to the OCC.

4901:1-6-29 Telephone Company Procedures for Notifying the Commission of Changes in Operations

See OTA's comments to proposed Rules 4901:1-6-07 and 4901:1-6-27. The Commission should deny OPTC's proposal to require OTA's members to provide notice to the OCC.

4901:1-6-30 Company Records and Complaint Procedures

See OTA's comments to proposed Rules 4901:1-6-07 and 4901:1-6-27. The Commission should deny OPTC's proposal to require OTA's members to provide notice to the OCC.

4901:1-6-31 Emergency and Outage Operations

See OTA's comments to proposed Rules 4901:1-6-07 and 4901:1-6-27. Furthermore, the Commission should deny OPTC's proposal to require OTA's members to provide emergency plans to the OCC. OTA's members are specifically concerned that making information about telephone companies' emergency plans public could have an adverse impact on network security, in turn making networks more vulnerable.

4901:1-6-33 Excess Construction Charges Applicable to Certain Line Extensions for the Furnishing of Local Exchange Telephone Service

As more thoroughly discussed in OTA's Comments, this Rule is a burdensome regulation that should be deleted in its entirety. Construction charges are determined on a case-by-case basis, are not specific to BLES, and have no relation to the type or class of service to be provided. The proposed rule should simply not be adopted. Nevertheless, if retained, OPTC's recommendation that the Rule be modified to include additional requirements is clearly unwarranted and unsupportable, and as such, should be rejected.

4901:1-6-37 Assessments and Annual Reports

OCTA recommends the addition of a full blown cost study to support pole attachment and conduit occupancy rates in each company's annual report. This suggestion, which clearly exceeds the scope of legislation, would dramatically expand the regulatory requirements associated with a set of services that were not the subject of the legislation and which the General Assembly deliberately did not address. The status quo should be maintained on pole attachments and OCTA's suggestions should not be adopted.

Conclusion

For the foregoing reasons, the Ohio Telecom Association respectfully requests the Commission adopt the Rules consistent with OTA's Comments and Reply Comments.

Respectfully submitted,

OHIO TELECOM ASSOCIATION

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below by electronic mail or via U.S. mail, postage pre-paid, this 30th day of September, 2010.

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