

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review of)
Chapter 4901:1-7 of the Ohio Administrative)
Code, Local Exchange Carrier-to-Carrier) Case No. 12-922-TP-ORD
Rules.)

**COMMENTS OF tw telecom of ohio llc
ON THE PUBLIC UTILITIES COMMISSION OF OHIO’S
BUSINESS IMPACT ANALYSIS**

Introduction

On August 20, 2012 the Commission issued the Business Impact Analysis (“Analysis”) pertaining to the Commission’s revision of Ohio Administrative Code (“OAC”) Chapter 4901:1-7. On August 20, 2012 Business Impact Analysis and the August 29, 2012 Revised Notice of Filing, the Commission invited interested parties to file comments on the contents of the Analysis by no later than September 10, 2012. The August 29, 2012 Revised Notice directed commenting parties to demonstrate how the proposed revised rules would have an adverse business impact on them as defined in Section 107.52, Revised Code. Pursuant to the Revised Notice, tw telecom of ohio llc (“TWTC”) now submits the following comments.

Comments

The Business Impact Analysis has been prepared by the Commission Staff and circulated to the stakeholders in Case No. 12-922-TP-ORD pursuant to the Governor’s Common Sense Initiative as framed in Executive Order 2011-01K. Paragraph 2(i) of Governor Kasich’s Executive Order, among other things, directs the Commission to ensure that it

Amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, and needlessly burdensome, have negative unintended consequences, or unnecessarily impede business growth.

Consistent with the direction of the Governor, the Analysis describes the Commission's intentions with respect to the draft revision of 4901:1-7 in the following terms:

Chapter 4901:1-7, Ohio Administrative Code (O.A.C.), establishes the standards by which telephone companies interconnect their networks to provision telephone service to end user customers pursuant to Chapter 4927 of the Revised Code. The proposed changes to this chapter include non-substantive amendments and rescissions of rules that result in a reduction of unnecessary reporting requirements, the streamlining of various rules, and the removal of unnecessary or outdated requirements. Further, the proposed changes include the addition of new definitions and the elimination of language incorporating by reference a version of the Code of Federal Regulations as of a date certain.

Ohio Revised Code Section 107.52(B) defines adverse impact on a draft rule as:

A draft rule that affects businesses has an adverse impact on businesses if a provision of the draft rule that applies to businesses has any of the following effects:

(B) It imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action, for failure to comply with its terms; or . . .

TWTC believes that the Staff performed a yeoman's job at developing an initial proposed draft revision to the rule and that, by and large; the comments received by the interested stakeholders should enable the Commission to improve on the Staff's initial work. The Analysis indicates that the Staff is recommending further changes based on the comments received from the interested stakeholders.

TWTC believes that an ambiguity exists in Rule 4901:1-7-23 that is easily corrected. As described below, this ambiguity in the rule creates an "adverse impact" because telecommunications providers will be required to seek a remedy before the Commission or in

federal district court when a utility party that is subject to the rule seeks to exploit the ambiguity to its advantage. Thus, this ambiguity has an adverse impact because it creates a cause of action.

The ambiguity stems from the provisions at 4901:1-7-02(B) that specifies the applicability of the rules in Chapter 4901:1-7 to “all telephone companies pursuant to 47 U.S.C. 251 and 252, as effective [per this Chapter of the Administrative Code].” This subparagraph of Rule 4901:1-7-02 is reasonably clear. However, Rule 4901:1-7-23, addressing rights-of-way, poles, ducts and conduit, applies at subparagraph (B) to “public utility poles, ducts, conduits, and right[s]-of-way”, as distinguished from “telephone companies” or “local exchange carriers” (either LECs, ILECs or CLECs). The use of “telephone companies,” “LEC,” “ILEC” or “CLEC” all fit consistently with the language in Rule 4901:1-7-02(B), as Sections 251 and 252 of the Telecom Act make these same distinctions.

Rule 4901:1-7-23(B) is the Commission’s incorporation of 47 USC 224 (Section 703 of the Telecom Act of 1996), into the Ohio regulatory scheme. That provision of the Telecom Act contains its own definition of “utility” and the reach of Section 224 is different than the reach of Sections 251 and 252. TWTC has always believed that the Commission intended the use of the term “public utility” to mean the definition contained in R.C. 4905.02, as those “public utilities” may also be subject to the reach of the term “utility” in 47 U.S.C. 224. But the clarifying language found at Rule 4901:1-7-02(B) can be seen as words of limitation, rather than clarification, arguing that the Commission’s use of the term “public utility” in Rule 4901:1-7-23(B) is also limited by the language in Rule 4901:1-7-02(B) and only extends to telecommunications carriers.

TWTC proposes a simple clarification that will once and for all rectify this point of ambiguity. The Commission should amend Rule 4901:1-7-23(B) to include a parenthetical after

the first use of the term “public utility” and before the word “poles” that clarifies the scope of this rule. With this change, the introductory sentence should read:

Rates, terms, and conditions for nondiscriminatory access to public utility
(as that term is defined in 47 U.S.C. 224) poles, ducts, conduits, and right-
of-way shall be established through negotiated arrangements or tariffs.

This simple clarification does not change the meaning of the rule but may prevent needless and contentious debate among parties as to the reach of this rule. This change is consistent with both the Governor’s direction and the intentions of the Commission through this CSI review process because this change will make the Commissions carrier to carrier rules easier to understand, apply or abide by. This recommended addition is not intended to supersede or replace any other modification to this rule that the Commission may be considering.

Conclusion

TWTC respectfully requests that the Commission adopt its recommendations as discussed above.

Respectfully submitted on behalf of
tw telecom of ohio llc



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CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing was served by either electronic mail or by regular U.S. Mail this 7th day of September 2012.



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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/7/2012 12:32:15 PM

in

Case No(s). 12-0922-TP-ORD

Summary: Comments on The Commission's Business Impact Analysis electronically filed by
Teresa Orahod on behalf of tw telecom of ohio llc