BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-6 of the Ohio Administrative Code, Regarding Telephone Company Procedures and Standards.	)))))	Case No. 14-1554-TP-ORD

REPLY COMMENTS OF CENTURYTEL OF OHIO, INC. D/B/A CENTURYLINK AND UNITED TELEPHONE COMPANY OF OHIO D/B/A CENTURYLINK

CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink (collectively "CenturyLink") submit these reply comments regarding the rules proposed by Staff of the Public Utilities Commission of Ohio (the "Commission") on September 23, 2015 (the "Proposed Rules") in this docket. For the reasons that follow, the modifications to the Proposed Rules recommended by the Ohio Telecom Association ("OTA") in its October 26, 2015 comments should be adopted.

Introduction

The rules the Commission adopts in this rulemaking must be consistent with the statute under which they are promulgated. *Vargas v. State Bd. Of Med. Bd. Of Ohio*, 2012-Ohio-2735, 972 N.E.2d 1076, 1080 (10th Dist.). Ohio courts have long recognized that "administrative rules, in general, may not add to or subtract from…the legislative enactment." *Central Ohio Joint Voc. Sch. Dist. Bd. Of Ed. V. Ohio Bureau of Employment Services*, 21 Ohio St.3d 5, 10, 487 N.E.2d 288 (1986). Rules that create a conflict between the authorizing statute and the rule are invalid. *See, e.g.*, *State ex rel. Am. Legion Post 25 v. Ohio Civil Rights Comm.*, 117 Ohio St.3d 441, 445, 884 N.E.2d 589 (2008).

In this case, the Proposed Rules depart in many significant respects from HB 64, the statute that authorizes them. For example, HB 64 was intended to eliminate an ILEC's carrier of last resort ("COLR") obligation where there is another provider of voice service that is reasonable and comparatively priced. The Proposed Rules ignore this purpose and attempt to create a new, more extensive COLR obligation that is not authorized by the Statute. Another example is HB 64's requirement that an ILEC's withdrawal of basic local exchange service be accomplished by notice alone. Again, the Proposed Rules ignore HB 64's provisions concerning notice and attempt to create an application process with numerous requirements that are not part of HB 64.

The Initial Comments filed by various parties on October 26, 2015 are in virtually unanimous agreement that the Proposed Rules exceed the Commission's authority under HB 64 in numerous respects. CenturyLink submits these reply comments to highlight several proposed rules identified by the commenters that are unlawful under HB 64 and to respond to certain comments made by the Ohio Consumer Counsel coalition.[1]

Response to Initial Comments

Response to OTA Comments

CenturyLink agrees with the comments filed by the OTA and its recommended changes to the Proposed Rules. Three of its recommended changes are particularly important. First, as explained in the OTA's comments, the Commission should not narrow the definition of "reasonable and comparatively priced voice service" by limiting it to voice service that "does not exceed the ILEC's BLES rate by more than twenty-five percent." Such a limitation violates the

[1] The coalition that includes Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, the Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services is hereinafter referred to as the "OCC" and their comments are referred to as the "OCC Comments."

requirement in R.C. 4927.10(B)(3) that the commission define the term "reasonable and comparatively priced voice service" to include "service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and *that is competitively priced, when considering all the alternatives in the marketplace and their functionalities*." (emphasis added). The OTA correctly recommends that the Commission should use the statutory definition in its rules without any further limitations.

Second, those sections of the Proposed Rules that purport to create a new COLR obligation for willing providers should be deleted from the rules. *Eg.* Proposed Rule 4901:1-6-21(B). The Proposed Rules are unlawful and frustrate the very purposes of HB 64 to the extent that they create a COLR obligation for willing providers. HB 64 was intended to facilitate the transition from copper networks using legacy technologies to fiber, coaxial cable and wireless networks and to eliminate COLR obligations because they are out-dated and stifle competition. To achieve these purposes, HB 64 allows ILECs to be relieved of COLR obligations where customers are able to obtain a reasonable and comparatively priced voice service from another provider. R.C. 4927.10(B). If the Commission determines that no reasonable and comparatively priced voice service will be available to a customer at the customer's residence, the Commission is required to attempt to identify a willing provider of a reasonable and comparatively priced voice service to serve the customer. R.C. 4927.10(B)(1)(a).

The COLR obligation imposed on willing providers in the Proposed Rules will ensure that no telecommunications carrier agrees to be a willing provider. No carrier will voluntarily assume the ILEC's COLR obligation when it can continue to provide service to customers without having to assume a COLR obligation. Under the Proposed Rules, there is no upside benefit to being a willing provider and plenty of downside risk because the carrier may become locked into making uneconomic network investments. Carriers will be unlikely to register as

willing providers under Proposed Rules 4901:1-6-21(G) and (H) if registering as a willing provider carries with it a COLR obligation.

Furthermore, it is manifestly unreasonable to create a new COLR obligation without providing a mechanism for carriers to recover their cost of serving high-cost customers. The same point can be made about ILECs' existing COLR obligations. In Ohio, the ILECs' existing obligation to provide BLES to all customers often forces them to provide service to high cost customers without a mechanism such as a universal service fund to allow them to recover their costs of providing BLES. HB 64 recognizes that it is not reasonable to saddle an ILEC with this COLR obligation in a competitive marketplace, and accordingly, it provides ILECs with a means of withdrawing BLES. To properly implement HB 64, the Commission should revise rule 4901:1-6-21 and its subparts as suggested by the OTA.

Third, the Commission should delete the application process in 4901:1-6-21(A) and all references to it from the proposed rules. The OTA correctly points out that the application process in the Proposed Rules is inconsistent with R.C. 4927.10(A), which provides for a self-effectuating notice process for withdrawing BLES. Under R.C. 4927.10(A), an ILEC can withdraw BLES if the FCC adopts an order that allows the ILEC to withdraw the interstate access component of its BLES and the ILEC provides one hundred twenty days' prior notice to the Commission and to its affected customers of the withdrawal or abandonment. While R.C. 4927.10(B) permits the Commission to order the ILEC to provide or continue to provide a reasonable and comparatively priced voice service under certain circumstances, the ILEC is nevertheless entitled to withdraw BLES after the expiration of the 120 day period.

Response to OCC Comments

The OCC Comments focus primarily on two aspects of the Proposed Rules. First, the OCC seeks to create an elaborate, redundant and burdensome set of notice requirements that go

far beyond anything HB 64 contemplates. (OCC Comments, pp. 4-12). Second, the OCC seeks to narrow the meaning of "reasonable and comparatively priced voice service" even further than the Proposed Rules do. (OCC Comments, pp. 19-23). The OCC's recommendations should not be adopted.

HB 64 contemplates that prior notice of the withdrawal of BLES be provided "to the public utilities commission and to its affected customers." R.C. 4927.10(A)(1). The Statute plainly does not require general notice to the public by mass media advertising, newspaper publications, or local radio and television station broadcasts. Moreover, it contemplates a single notice to the affected customers because the 120 day advance notice period must be tied to a specific date. Requiring multiple layers of different types of notice only serves to confuse when the notice will be effective and thus cannot be what the Ohio Legislature intended when it enacted HB 64.

The OCC appears to be concerned that there will be affected customers who will disregard a notice sent to them, who will not have a reasonable and comparatively priced voice service alternative and who will not be cognizant that their BLES service is about to be withdrawn. However, HB 64 already addresses that circumstance through the collaborative process, which serves the purpose of identifying customers or service areas where there are no reasonable and comparatively priced voice service alternatives. Customers identified in the collaborative process are treated as if they had filed a petition with the Commission under R.C. 4927.10(B). Thus, there is no principled reason for requiring the type of scorched earth notification process that the OCC advocates.

The OCC also advocates that the Commission limit the definition of "reasonable and comparatively priced voice service" to services that cost no more than 10% above the price of the ILEC's BLES. (OCC Comments, p. 21). As discussed above, such a limitation does not

comply with HB 64's directive that "reasonable and comparatively priced voice service" shall include a service "that is competitively priced, when considering all the alternatives in the marketplace and their functionalities." The Commission should define this term as it is defined in R.C. 4927.10(B)(3).

The OCC also makes certain arguments concerning how differences in functionalities should be evaluated for purposes of determining whether a service is a reasonable and comparatively priced voice service. (OCC Comments, pp. 21 – 23). However, the OCC's arguments on this point don't speak to the definition of "reasonable and comparatively priced voice service." Instead, as OCC acknowledges, their arguments address the application of the rules the Commission ultimately adopts. (OCC Comments, p. 21).

Conclusion

For the reasons identified above, CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink request that the Commission adopt the recommendations made Ohio Telecom Association in its October 26, 2015 comments and reject the recommendations made by the OCC Coalition.

Respectfully submitted,

November 9, 2015

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CERTIFICATE OF SERVICE

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Summary: Comments Reply Comments of CenturyTel of Ohio, Inc. d/b/a CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink electronically filed by Ms. Christen M. Blend on behalf of CenturyTel of Ohio Inc. dba CenturyLink and United Telephone Company of Ohio d/b/a CenturyLink