

## 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

### FOURTH ENTRY ON REHEARING

Entered in the Journal on August 9, 2017

#### I. SUMMARY

{¶ 1} The Commission grants in part and denies in part the application for rehearing filed by the Ohio Cable Telecommunications Association and denies the application for rehearing filed collectively by 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.

#### II. DISCUSSION

##### A. *Applicable Law*

{¶ 2} Pursuant to R.C. 106.03(A) and R.C. 111.15, all state agencies are required to conduct a review every five years of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules.

{¶ 3} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

##### B. *Procedural History*

{¶ 4} On September 4, 2014, the Commission opened Case No. 14-1554-TP-ORD (*Retail Rules Case*), *In re the Commission's Review of Chapter 4901:1-6 of the Ohio Administrative Code, Regarding Telephone Company Procedures and Standards*, for the

purpose of commencing the five-year review of the rules contained in Ohio Adm.Code Chapter 4901:1-6.

{¶ 5} Pursuant to its November 30, 2016 Finding and Order (Finding and Order) in the *Retail Rules Case*, the Commission adopted administrative rules regarding telephone company procedures and standards. Consistent with the Finding and Order, some rules were identified as no change rules, some were identified as amended rules, and one was identified as a new rule.

{¶ 6} On December 30, 2016, AT&T Ohio; Ohio Cable Telecommunications Association (OCTA); the Ohio Telecom Association (OTA); and Edgemont Neighborhood Coalition, Legal Aid Society of Southwest Ohio LLC, The Office of the Ohio Consumers' Counsel (OCC), Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (jointly, Consumer Groups); filed applications for rehearing of the Finding and Order.

{¶ 7} On January 9, 2017, AT&T Ohio, OCTA, OTA, and Consumer Groups each filed a memorandum contra the applications for rehearing.

{¶ 8} On January 25, 2017, the Commission issued its Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

{¶ 9} On April 5, 2017, the Commission issued its Second Entry on Rehearing granting some and denying some of the assignments of error set forth in the applications for rehearing.

{¶ 10} On May 5, 2017, OCTA and Consumer Groups filed applications for rehearing of the Commission's April 5, 2017 Second Entry on Rehearing.

{¶ 11} On May 15, 2017, AT&T Ohio and OCTA filed memorandum contra Consumer Groups' application for rehearing.

{¶ 12} On May 15, 2017, Consumer Groups filed a memorandum contra OCTA's application for rehearing.

{¶ 13} On May 24, 2017, the Commission issued its Third Entry on Rehearing granting rehearing for the limited purpose of further consideration of matters raised in the applications for rehearing.

*C. Assignments of Error*

{¶ 14} In its first assignment of error, OCTA asserts that "[i]t was unjust and unreasonable for the Commission to conclude that it has to 'extend its reach' and regulate voice services, including voice over Internet Protocol services." In support of its position, OCTA points to the following requirements of the Second Entry on Rehearing:

- a. Voice over Internet Protocol (VoIP) service providers to comply with the basic local exchange service (BLES) withdrawal rule [adopted Rule 4901:1-6-02(C)];
- b. Providers of any newer telecommunications service to comply with the basic local exchange service (BLES) withdrawal/abandonment rule (adopted Rule 4901:1-6-02(D);
- c. Non-incumbent local exchange service (ILEC) voice service providers to file a notice with the Commission before withdrawing or abandoning the voice service [adopted Rule 4901:1-6-21(F)]; and
- d. A voice service provider may become subject to the BLES withdrawal/abandonment process, with the possibility of the Commission requiring that the provider continue to provide voice service, including VoIP service, upon a Commission

investigation and issuance of specific determinations  
[adopted Rule 4901:1-6-21(G)].

(OCTA Application for Rehearing at 5.)

{¶ 15} OCTA submits that nothing in Amended Substitute House Bill 64 (H.B. 64), which amended certain portions of R.C. Chapter 4927, authorizes the Commission to impose new regulations on voice services, including VoIP services, merely because an ILEC files for a BLES withdrawal/abandonment. Rather, OCTA asserts that H.B. 64 established a process limited to the withdrawal of BLES by ILECs in certain circumstances. According to OCTA, to the extent that H.B. 64 invokes voice service providers, it does so solely to address the identification of a reasonable and comparatively priced voice service or a willing provider of voice service for the limited purpose of evaluating the ILEC's request for BLES withdrawal/abandonment. In support of its position, OCTA focuses on the fact that in H.B. 64, BLES is expressly distinguished among other voice services. According to OCTA, if the legislature intended for the Commission to impose new regulations on voice services, including VoIP, it would have included language to that effect. (OCTA Application for Rehearing at 5-6.)

{¶ 16} Further, OCTA contends that the Commission improperly relies on R.C. 4927.03(A) to expand its regulatory authority to encompass voice services, including VoIP. Specifically, OCTA states that "R.C. 4927.03 was established in 2010 to deregulate new communication services, including VoIP services." OCTA avers that "[n]owhere in this proceeding has the Commission explained why it deems these rules suddenly necessary for the protection, welfare, and safety of the public." (OCTA Application for Rehearing at 7-8.)

{¶ 17} According to OCTA, the rules could be applied to providers who are neither telephone companies nor public utilities under Ohio law. Additionally, OCTA contends that the adopted rules apply even though the withdrawal/abandonment

process that would be applied to voice service providers is statutorily limited to only ILECs. (OCTA Application for Rehearing at 8.)

{¶ 18} In regard to OCTA's argument that the legislature did not grant the Commission authority to regulate providers of voice service offered through VoIP and other new technologies, Consumer Groups contend that OCTA raises the same argument that it and other telephone interests made in their applications for rehearing of the Commission's November 30, 2016 Finding and Order. Consumer Groups respond that the Commission disposed of these arguments in its April 5, 2017 Second Entry on Rehearing. (Consumer Groups' Memorandum Contra at 4.)

{¶ 19} Relative to OCTA's claim that the Commission used R.C. 4927.03(A) to unlawfully extend the reach of its rules over VoIP and new technologies, Consumer Groups respond that while OCTA is correct that R.C. 4927.03(A) removes Commission jurisdiction over VoIP and telecommunications services not commercially available on September 13, 2010, the statute provides that the Commission may still establish rules specific to such services "upon a finding that the exercise of the Commission's authority is necessary for the protection, welfare, and safety of the public." (Consumer Groups' Memorandum Contra at 4-5.)

{¶ 20} Specifically, Consumer Groups note that in its Finding and Order of November 30, 2016, the Commission discussed its responsibility to regulate VoIP and other new telecommunications services to ensure the protection, welfare, and safety of the public. In particular, Consumer Groups focus on the Commission's identification of the need for continued to voice service in order to have access to 9-1-1, emergency services, and for the purpose of transmitting information related to medical devices in the scenario in which an entity is the sole provider of voice service in a particular geographic area and the abandonment or withdrawal of such service will result in the inability of affected customers to access these emergency services. Consumer Groups note that as a result of H.B. 64, for the first time VoIP or another voice service may be the

only phone service available to some consumers should an incumbent provider withdraw basic service. Therefore, Consumer Groups submit that the Commission properly exercised jurisdiction over voice service provided through VoIP and newer technologies when it is the only way for consumers to access emergency services. (Consumer Groups' Memorandum Contra at 5-7.)

{¶ 21} With respect to OCTA's first assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this determination, the Commission finds that OCTA has failed to raise any new arguments for the Commission's consideration that have not already been fully addressed by the Commission. (Second Entry on Rehearing at 28-30.)

{¶ 22} In its second assignment of error, OCTA states that it is unjust and unreasonable for the Commission to endorse the filing of a R.C. 4927.10(B) petition by myriad third parties and to not define an authorized representative. In support of this assignment of error, OCTA points out that in the Second Entry on Rehearing the Commission determined that petitions should not be limited to the residential customer or the customer's legal counsel. OCTA believes that such a determination is contrary to R.C. 4927.10(B), which provides that the petition must be filed by a residential customer. In support of its position, OCTA notes that Ohio Adm.Code 4901-1-04 requires that all applications, complaints, other pleadings filed by any person shall be signed by that person or by his or her attorney. Further, OCTA believes that the Commission's decision could result in the unauthorized practice of law by third parties. Finally, OCTA believes that the contemplated petition is more than a notice filing, as it will make claims of which the Commission is statutorily required to attest. (OCTA Application for Rehearing 8-10.)

{¶ 23} In regard to OCTA's arguments regarding the Commission allowing for the filing of petitions by authorized representatives on behalf of customers, Consumer Groups believe that the Commission has already sufficiently addressed OCTA's

arguments regarding petitions filed on behalf of customers. Consumer Groups point out that the General Assembly did not specify the form that customer petitions should take. Therefore, Consumer Groups believe that the Commission has the proper discretion to treat customer petitions as less-formal notices. Further, Consumer Groups opine that the customer petitions do not constitute complaints or pleadings inasmuch as no legal positions would be set forth in a customer petition. Rather, any claims asserted on behalf of a customer would be factual, and not legal, in nature. Additionally, in response OCTA's argument that by rule (i.e., Ohio Adm.Code 4901-1-04), filings with the Commission must be signed by the person making the submission, Consumer Groups respond that the rule only applies to applications, complaints, or other pleadings. Additionally, Consumer Groups point out that pursuant to Ohio Adm.Code 4901-1-38(B), the Commission may upon its own motion or upon a motion filed by a party, waive any requirement other than a requirement mandated by statute from which no waiver is permitted. (Consumer Groups' Memorandum Contra at 8-9.)

{¶ 24} With respect to OCTA's second assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this decision the Commission emphasizes that the short 120-day review time frame permitted for the Commission to consider a notice filing for the withdrawal of BLES necessitates the Commission being notified as quickly as possible regarding the existence of any customers that may be adversely impacted by the proposed withdrawal of BLES. In light of the fact that customers will have 30 days to notify the Commission of their concerns, the Commission is left with just 90 days to complete its review. Therefore, the overriding objective is to establish a process that maximizes the ability for impacted customers to be identified in a timely manner. This includes the ability of an authorized representative to file on behalf of the customer. It is only after customers have been identified that the Commission can commence its investigation regarding specific customers. To the extent that the authenticity of a specific petition is suspect, the Commission has provided a mechanism for this concern to be raised. The customer

petitions constitute notice filings for the purpose of identifying those residential customers that may be adversely affected by the proposed withdrawal of BLES. Further, as pointed out by Consumer Groups, the form of the filing of such petitions is not specified by statute. Therefore, pursuant to Ohio Adm.Code 4901-1-38, the Commission on its own motion grants a waiver of Ohio Adm.Code 4901-1-04, to the extent applicable for the purposes of implementing Ohio Adm.Code 4901:1-6-21.

{¶ 25} In its third assignment of error, OCTA submits that it was unjust and unreasonable for the Commission to fail to review/revise the previously amended Business Impact Analysis of September 2015 in light of the recently adopted amended rules for Ohio Adm.Code Chapter 4901:1-6 pursuant to the Second Entry on Rehearing. Additionally, OCTA opines that the Commission should have required that a BIA reflecting the newly amended rules be submitted to the Common Sense Initiative, consistent with R.C. 121.82.

{¶ 26} Upon a review of OCTA's third assignment of error, the Commission finds that the application for rehearing should be granted. A revised BIA will be issued along with the final rules incorporating the impact of the rules in Ohio Adm.Code Chapter 4901:1-6 as revised by the April 5, 2017 Second Entry on Rehearing.

{¶ 27} In its first assignment of error, Consumer Groups contend that the Commission unreasonably allowed telephone companies to object to petitions filed on behalf of customers under adopted Ohio Adm.Code 4901:1-6-21(C). Consumer Groups request that the Commission modify its Second Entry on Rehearing so that telephone companies may not challenge petitions submitted on behalf of customers by their authorized representatives. Specifically, Consumer Groups believe that the decision could needlessly impede the Commission's statutorily required investigation to identify voice service for customers who have no alternatives to their telephone company's basic service. (Consumer Groups' Application for Rehearing at 2.) Consumer Groups aver that allowing telephone companies to object to a petition submitted on behalf of a



customer is unreasonable, especially when the credentials of the customer's representative is the only grounds for the challenge. Further, Consumer Groups submit that allowing telephone companies to object to a petition filed on behalf of a customer does not enhance the process contemplated by H.B. 64 and that the telephone company's role should be limited to cooperating with the Commission's investigation. (Consumer Groups' Application for Rehearing, Memorandum in Support at 4.)

{¶ 28} OCTA responds that the Consumer Groups' first assignment of error is inconsistent with the Commission's procedural rules and contrary to the concept of fundamental fairness pursuant to which parties should have the opportunity to respond to other parties. In support of its position, OCTA points out that the Commission's rules permit a responsive filing or objections to numerous types of filings including complaints, motions, interlocutory appeals, applications for rehearing, and staff reports. Similarly, OCTA asserts that to prohibit an objection to a R.C. 4927.10(B) petition would be completely inconsistent with the Commission's procedural rules notwithstanding the compressed time frames under which the Commission may be operating. (OCTA Memorandum Contra at 3-4.)

{¶ 29} Additionally, OCTA submits that pursuant to Ohio Adm.Code 4901-1-4, applications, complaints, and other pleadings filed by any person shall be in writing and signed by the person or their attorney. According to OCTA, this rule protects against those entities intending to abuse the legal system by filing documents on behalf of others without authorization. OCTA opines that it would be inconsistent with the intent of Ohio Adm.Code 4901-1-4 to preclude a telephone company, in the context of the abandonment proceedings, from challenging a filing where circumstances suggest that the filing may not be legitimate. (OCTA Memorandum Contra at 3-4.)

{¶ 30} AT&T Ohio responds that H.B. 64 is silent regarding an authorized representative filing on behalf of a BLES customer. Similarly, AT&T Ohio states that the statute does not prohibit a telephone company from raising a legitimate objection to a

petition filed by someone claiming to be an authorized representative of a customer. Further, AT&T Ohio asserts that to the extent that a representative files a petition on behalf of a customer, they should be prepared to provide evidence of authorization. Finally, AT&T Ohio states that, consistent with the procedural due process rights of a party to a Commission proceeding, all parties are allowed to file motions pursuant to Ohio Adm.Code 4901-1-12. (AT&T Ohio Memorandum Contra at 1-2.)

[¶ 31] Upon review of the arguments summarized above regarding Consumer Groups' first assignment of error, the Commission finds that the application for rehearing should be denied. Specifically, while recognizing the tight timeline that the Commission has to consider a notice filing for the withdrawal of BLES, the filing of customer petitions must be premised on the underlying assumption that such filings are being made by either the telephone subscriber or their authorized representative. To the extent that unauthorized customer petitions are filed, the telephone company should be permitted to file the applicable objection inasmuch as unauthorized petitions will only adversely result in the Commission Staff's focus being diverted from legitimate petitions being filed on a customer's behalf. Additionally, the Commission notes that consistent with H.B. 64, there is an assumption that the notice filing for the withdrawal request will automatically proceed for the entire affected service area unless the Commission can identify those subscribers who will be unable to receive reasonable and comparatively priced service upon the withdrawal of BLES by an ILEC. Therefore, only upon a properly filed subscriber petition can the Commission exercise its authority to protect those subscribers who will be unable to receive reasonable and comparatively priced service upon the withdrawal of BLES by an ILEC.

[¶ 32] As a point of clarification, the Commission explains that while a telephone company can object as to whether an individual/entity is truly an authorized representative, it can not object to the customer's petition on other grounds (e.g., substantive) due to the short time frames available for the Commission's consideration

and due to the fact that the petition is simply a mechanism for the Commission Staff to commence its investigation.

{¶ 33} In its second assignment of error, Consumer Groups state that adopted Ohio Adm.Code 4901:1-6-21(B)(1) unreasonably places customers at risk for unlawful loss of their basic service because the rule does not require submission of a final order from the Federal Communications Commission (FCC) (Consumer Groups' Application for Rehearing at 2). In support of its position, Consumer Groups note that the FCC has a reconsideration process for its initial orders. Therefore, Consumer Groups contend that consumers could be harmed if a telephone company is allowed to withdraw basic service before the reconsideration process at the FCC is complete inasmuch as customers may have needlessly pursued alternative providers and possibly paid more for an alternative voice service. Consumer Groups believe that only a final FCC order authorizing the removal of the interstate access component of basic service would provide a telephone company with the requisite statutory authority to begin the process of withdrawing customers' basic service. (Consumer Groups' Memorandum in Support at 6-7.)

{¶ 34} AT&T Ohio contends that Consumer Groups' second assignment of error is inconsistent with the statutory construct set forth in R.C. 4927.10. Specifically, AT&T Ohio points out that consistent with R.C. 4927.10(A), only the issuance of a FCC order, and not a final order, is required to allow the ILEC to proceed with the withdrawal mechanisms provided under Ohio law. In support of its position, AT&T Ohio submits that unless stayed, an order issued by the FCC is lawful and effective even if a party later files a petition for reconsideration. (AT&T Ohio Memorandum Contra at 3.)

{¶ 35} Further, AT&T Ohio states that Consumer Groups' position would result in undue harm because Consumer Groups could simply file a petition for reconsideration at the FCC, causing unlimited delay in an ILEC's ability to use the withdrawal mechanisms established by the legislature. Specifically, AT&T Ohio notes that there is

no time limit for the FCC to rule on a petition for reconsideration. (AT&T Ohio Memorandum Contra at 3.)

{¶ 36} Upon a review of the arguments summarized above regarding Consumer Groups second assignment of error, the Commission finds that the application for rehearing should be denied. In reaching this determination, the Commission agrees with AT&T Ohio that pursuant R.C. 4927.10(A), the triggering event for the commencement of the process for an ILEC's abandonment of BLES is the issuance of an FCC order. As noted by AT&T Ohio, unless stayed, an order issued by the FCC is lawful and effective even if a party later files a petition for reconsideration.

### III. ORDER

{¶ 37} It is, therefore,

{¶ 38} ORDERED, That the application for rehearing of OCTA be granted in part and denied in part as set forth above. It is, further,

{¶ 39} ORDERED, That, to the extent applicable, the Commission grants a waiver of Ohio Adm.Code 4901-1-04. It is, further,

{¶ 40} ORDERED, That the application for rehearing of Consumer Groups be denied as set forth above. It is, further,

{¶ 41} ORDERED, That, to the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied. It is, further,

{¶ 42} ORDERED, That the rules set forth in the attachment to the Finding and Order, as amended by the April 5, 2017 Entry on Rehearing, and the revised Business Impact Analysis attached hereto, be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

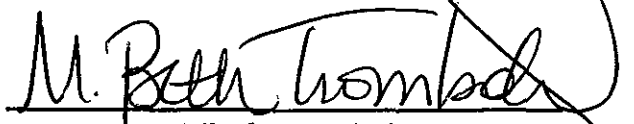
{¶ 43} That the final rules be effective on the earliest date permitted. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-6 shall be in compliance with R.C. 111.15. It is, further,

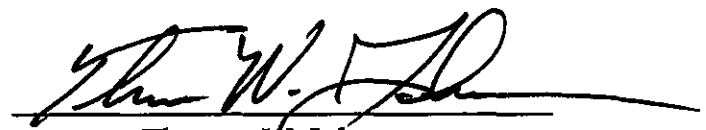
{¶ 44} ORDERED, That notice of the adoption of this Fourth Entry on Rehearing and the attached Business Impact Analysis be sent to the Telephone list serve. It is, further,

{¶ 45} ORDERED, That a copy of this Fourth Entry on Rehearing and the Business Impact Analysis be served upon all commenters of record.

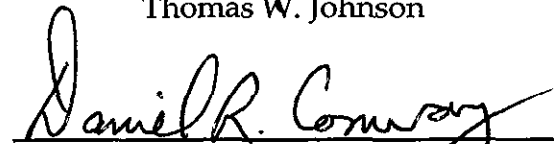
THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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AUG 09 2017

  
Barcy F. McNeal  
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# CSI - Ohio

The Common Sense Initiative

## Amended Business Impact Analysis

Agency Name:	Public Utilities Commission of Ohio (PUCO)
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Regulation/Package Title:	Ohio Adm.Code Chapter 4901:1-6 Telephone Company Procedures and Standards
Rule Number(s):	4901:1-6-01 through 4901:1-6-37
Date:	August 9, 2017 - Revised
Rule Type:	<input checked="" type="checkbox"/> New <input checked="" type="checkbox"/> 5-Year Review <input checked="" type="checkbox"/> No Change <input checked="" type="checkbox"/> Amended <input checked="" type="checkbox"/> Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### Regulatory Intent

On September 5, 2014, the Commission opened docket *In re Review of Chapter 4901:1-6 of the Ohio Adm.Code Case No. 14-1554-TP-ORD*, in which a five-year review of its retail telecommunications rules, including the withdrawal and abandonment of telecommunications services, is being considered. A workshop was held, a Business Impact Analysis was submitted, and comments were received relative to the review of Ohio Adm.Code 4901:1-6.

Subsequent to the holding of the workshop and the receipt of comments, the 131<sup>st</sup> Ohio General Assembly adopted Am. Sub. House Bill 64 (H.B. 64) that, among other things, directed the Commission to adopt rules to implement R.C. 4927.10 and 4927.101, as well as the amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11. A workshop relative to these issues was held on August 26, 2015. Pursuant to the Entry of September 16, 2015, comments were sought regarding Commission Staff proposed rules implementing R.C. 4927.10 and 4927.101, as well as amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11.

The Commission issued its Finding and Order on November 30, 2016, adopting administrative rules regarding telephone company procedures and standards. Substantive Entries on Rehearing were issued on April 5, 2017, and August \_\_, 2017. Consistent with the Finding and Order and Entries on Rehearing some rules were identified as no change rules, some as amended rules, one as a new rule, and one rule was cancelled.

**1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.**

Ohio Adm.Code Chapter 4901:1-6 establishes the procedures and standards for telephone companies in the state of Ohio. Rule amendments include:

- a. The addition of “carrier of last resort” in Ohio Adm.Code 4901:1-6-01(F);
- b. The addition of “interstate-access component” in Ohio Adm.Code 4901:1-6-01(T);
- c. The deletion of “provider of last resort” in Ohio Adm.Code 4901:1-6-01(Y);
- d. The addition of “reasonable and comparatively priced voice service” in Ohio Adm.Code 4901:1-6-01(BB);
- e. The addition of “voice service” in Ohio Adm.Code 4901:1-6-01(PP);
- f. The addition of “willing provider” in Ohio Adm.Code 4901:1-6-01(QQ);
- g. The addition in Ohio Adm.Code 4901:1-6-02(C) of Ohio Adm.Code 4901:1-6-21 as one of the rules for which an exemption cannot be availed by a provider of interconnected voice over Internet protocol-enabled service to the extent necessary for the protection, welfare, and safety of the public.
- h. The addition in Ohio Adm.Code 4901:1-6-02(D) of Ohio Adm.Code 4901:1-6-21 [carrier’s withdrawal or abandonment of basic local exchange service (BLES) or voice service] as one of the rules for which an exemption cannot be availed by a provider of any telecommunications service that was not commercially available as of September 13,

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2010, and that employs technology that became available for commercial use only after September 13, 2010;

- i. The addition in Ohio Adm.Code 4901:1-6-07(A) of Ohio Adm.Code 4901:1-6-21 as an exception of the standard advance notice requirement;
- j. The addition in Ohio Adm.Code 4901:1-6-07(C) of the advanced notice requirement for the withdrawal of BLES or voice service in accordance with Ohio Adm.Code 4901:1-6-21;
- k. The change in Ohio Adm.Code 4901:1-6-09(C) from August 31 to January 31 of each year for the filing by an ETC of the annual certification and verification affidavit;
- l. The substitution of “the statewide emergency services internet protocol network steering committee or its designee” in place of “the state of Ohio’s 9-1-1 coordinator” in Ohio Adm.Code 4901:1-6-10(E) and 4901:1-6-31(C);
- m. The addition in Ohio Adm.Code 4901:1-6-14(C)(1)(a)(iii) regarding an incumbent local exchange company (ILEC) making multiple rate increases within a 12-month period.
- n. The addition in Ohio Adm.Code 4901:1-6-14(J) regarding BLES installation and reconnection fees.
- o. The deletion of the following sentence “The commission staff shall provide active leadership in the initial organization of the statewide board and the development of procedures and bylaws under which the board will operate” from Ohio Adm.Code 4901:1-6-19(F);
- p. The deletion of Ohio Adm.Code 4901:1-6-19(H)(1)(d), (f), (g), (h), and (i); 4901:1-6-19(J), 4901:1-6-19 (K), (L) and (N). Additionally, Ohio Adm.Code 4901:1-6-19 has been amended to revise the requirements pertaining to competitive eligible telecommunication carriers (CETC), including to reflect that the flat-rate requirement of Ohio Adm.Code 4901:1-6-19(B) does not apply to a CETC’s free wireless Lifeline;
- q. The revision in Ohio Adm.Code 4901:1-6-19(H)(2) to reflect that subscribers with a household at or below 135 percent of the federal poverty line are eligible for Lifeline benefits and the addition of Veterans’ Administration statement of benefits as an example of acceptable documentation of household income.



- r. The revision in Ohio Adm.Code 4901:1-6-19 to reflect that the ILEC eligible telecommunications carrier (ETC) shall provide subscribers with an additional thirty days following the date of the termination letter to submit documentation or dispute the impending termination of service;
- s. The revision in Ohio Adm.Code 4901:1-6-19 to set forth de-enrollment provisions;
- t. The revision in Ohio Adm.Code 4901:1-6-19 to establish parameters regarding the payment of financial incentives by ETCs and CETCs to community organizations.
- u. The rescinding of the former Ohio Adm.Code 4901:1-6-21, consistent with the termination of the community voicemail pilot program;
- v. The addition of new Ohio Adm.Code 4901:1-6-21, regarding the withdrawal of BLES or voice service by an ILEC and the required notice process, including the mechanism for impacted residential customers unable to obtain reasonable and comparatively priced voice service upon the withdrawal of BLES to file a petition with the Commission. Pursuant to the newly adopted Ohio Adm.Code 4901:1-6-21(F), a sole provider of voice service, including non-ILECs, seeking to withdraw or abandon voice service must formally notify the Commission. Consistent with newly adopted Ohio Adm.Code 4901:1-6-21(G), if residential customers will not have access to 9-1-1 or emergency services, the current provider be subject to the same requirements applicable to ILECs;
- w. The addition in Ohio Adm.Code 4901:1-6-22 of the requirement that inmate service providers must disclose the methods by which its rates or charges will be collected. The rule is also revised to reflect the maximum rate for usage sensitive charges and ancillary charges.
- x. The addition in Ohio Adm.Code 4901:1-6-25(B)(4) that Ohio Adm.Code 4901:1-6-21 and 4901:1-6-27, must be complied with prior to the discontinuation of basic local exchange service by an incumbent local exchange carrier;
- y. The changing of the rule name of Ohio Adm.Code 4901:1-6-27;
- z. The addition of the reference of Ohio Adm.Code 4901:1-6-21 in Ohio Adm.Code 4901:1-6-27(A);

- aa. The addition in Ohio Adm.Code 4901:1-6-37(A) of CETCs to the list of entities required to file an annual report and willing providers to the list entities required to submit an annual assessment report;
- bb. The deletion in Ohio Adm.Code 4901:1-6-37(C) of the requirement that local exchange carriers pay an assessment for the costs incurred by vendors engaged in the community voicemail pilot program; and
- cc. The addition of language in Ohio Adm.Code 4901:1-6-37(C) requiring the payment of a fee for the Commission's support by wireless resellers of lifeline service not presently assessed a fee for such support.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

<b>Rule</b>	<b>Statutory Authority – Ohio Revised Code</b>
4901:1-6-01	4901.13, 4905.84, 4927.01, 4927.02, 4927.03, 4927.10, 4927.11
4901:1-6-02 through 4901:1-6-20, 4901:1-6-22, 4901:1-6-23, 4901:1-6- 25, 4901:1-6-28, 4901:1-6-32 through 4901:1-6-35	4901.13, 4927.03
4901:1-6-07	4901.13, 4927.03, 4927.10
4901:1-6-21	4901.13, 4927.03, 4927.10, 4927.11
4901:1-6-24	4901.13, 4905.84, 4927.03
4901:1-6-26, 4901:1-6-29 through 4901:1-6-31	4901.13, 4927.03
4901:1-6-27	4901.13, 4927.10, 4927.11
4901:1-6-36	4901.13, 4905.84
4901:1-6-37	4905.10, 4905.14

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

Yes.

Pursuant to the authority delegated to the states, Ohio Adm.Code 4901:1-6-09 implements the federally required designation of ETCs pursuant to 47 U.S.C. 214(e), 47 C.F.R. 54.201(d) and 47 C.F.R. 54.202.

Pursuant to Ohio Adm.Code 4901:1-6-16, telephone companies in possession of customer proprietary network information shall protect customer information in accordance with 47 U.S.C. 222 and in accordance with the rules and procedures prescribed by the Federal Communications Commission (FCC) at 47 C.F.R. 64.2001 to 64.2011.

Pursuant to Ohio Adm.Code 4901:1-6-17, every telephone company shall comply with the FCC's truth in billing requirements in 47 C.F.R. 64.2401 and shall, in conformance with those requirements, accurately identify on every bill all services rendered, the providers of those services, and all billed charges, fees, and taxes so that they are clear and not misleading.

Pursuant to Ohio Adm.Code 4901:1-6-18, providers of telecommunications service, in the course of submitting or executing a change on behalf of a subscriber in the selection of a telephone company, shall obtain authorization and verification of the authorization in accordance with the rules and procedures set forth in 47 C.F.R. 64.1100 to 64.1170 and maintain records of the verification consistent with the rules and procedures of the FCC. To the extent that disputes arise, the applicable remedies include those set forth by the FCC. A provider of telecommunications service shall offer a preferred carrier freeze only in accordance with the rules and procedures prescribed by the FCC.

Pursuant to Ohio Adm.Code 4901:1-6-19, an ILEC that is an ETC under 47 C.F.R. 54.201 shall implement lifeline service throughout the ILEC's traditional service area for its eligible residential customers. All ILEC ETCs must verify customer eligibility consistent with the FCC's requirements in 47 C.F.R. 54, in order to enroll customers into lifeline assistance who qualify through household income-based requirements. All ILEC ETCs must establish procedures to verify an individual's continuing eligibility for both program and income-based criteria consistent with the FCC's requirements in 47 C.F.R. 54.409-54.410. If an ILEC chooses to establish a customer billing surcharge to recover its lifeline expenses, the surcharge shall appear in the section of the bill reserved for taxes and government-mandated charges as set forth in 47 C.F.R. 64.2400-64.2401.

Pursuant to Ohio Adm.Code 4901:1-6-21(B)(1), as part of the process to withdraw BLES by an incumbent local exchange carrier, a copy of the FCC's order under 47 U.S.C. 214 that allows the carrier to withdraw the interstate-access component of its BLES must be provided.

Pursuant to Ohio Adm.Code 4901:1-6-23, the provisioning of pay telephone access lines, including the rates, terms, and conditions of such lines, is subject to applicable laws, including rules or regulations adopted and orders issued by the Public Utilities Commission of Ohio (PUCO) or the FCC.

Pursuant to Ohio Adm.Code 4901:1-6-24(E), the PUCO has such power and jurisdiction relative to wireless service providers to perform the obligations authorized by or delegated to it under federal law and federal regulations including those regarding: (1) the rights and rights and obligations under section 251 of the Telecommunications Act of 1996; (2) mediation and arbitration of disputes and approval of agreements under section 252 of the

Telecommunications Act of 1996; (3) administration of telephone numbers and number portability; (4) certification of telecommunications carriers eligible for universal service funding; and (5) administration of federal regulations on customer proprietary network information.

Pursuant to Ohio Adm.Code 4901:1-6-24(E), interconnection and resale agreements approved under the Telecommunications Act of 1996 are subject to the terms of the agreements, federal law, and Ohio Adm.Code Chapter 4901:1-7.

Pursuant to Ohio Adm.Code 4901:1-6-24(F), to the extent that a wireless service provider or reseller of wireless service seeks certification in Ohio as a telecommunications carrier eligible for universal funding under 47 U.S.C. 214(e), the PUCO has authority to consider the application and impose requirements with respect to lifeline service if the carrier seeks to withdraw funds from the universal service fund for the provision of lifeline service.

Pursuant to Ohio Adm.Code 4901:1-6-29(D), a telephone company may elect to demonstrate compliance with the required customer notification by providing evidence of its satisfying the notification procedures set forth in 47 C.F.R. 63.71.

Pursuant to Ohio Adm.Code 4901:1-6-31(A), the PUCO will utilize existing FCC rules applicable to emergency and outage operations.

Pursuant to Ohio Adm.Code 4901:1-6-31(F)(1), each facilities-based local exchange carrier shall develop, implement, and maintain an emergency plan that includes procedures for maintaining and annually updating a list of customers who have subscribed to the federal telecommunications service priority program, as identified in 47 C.F.R. 64, appendix A.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The areas of certification and operation of telephone providers relative to their intrastate offerings is under the jurisdiction of the PUCO, and not the FCC. Therefore, for the majority of Ohio Adm.Code Chapter 4901:1-6, the regulation neither exceeds nor is inconsistent with any federal requirements. In other cases (i.e., See responses to Question 3), the regulation relies upon and is consistent with existing federal regulation.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose of Ohio Adm.Code Chapter 4901:1-6 is to implement the statutory authority regarding retail telecommunication services as set forth in R.C. 4927.04 and 4927.05.

**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

Among other things, the PUCO will be able monitor the number of providers entering and exiting the market and the related service offerings, the number of customers subscribing to the service offerings, and the number of customer complaints.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.**

On September 8, 2014, in Case No. 14-1554-TP-ORD, the PUCO issued an entry by U.S. mail and email indicating that a workshop would be conducted on October 6, 2014, to listen to any proposed modifications to the proposed rules. On August 12, 2015, in Case No. 14-1554-TP-ORD, the PUCO issued an entry by U.S. mail indicating that a workshop would be conducted on August 26, 2015, to listen to any proposed modifications to the proposed rules resulting from H.B. 64. The entry was served upon The Ohio Telecom Association (OTA), the office of the Ohio Consumers' Counsel, and the telephone industry list-serve. The workshops were held as scheduled.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

The October 6, 2014, workshop was attended by the OTA, including the Small Incumbent Local Exchange Carriers; Cincinnati Bell Telephone Company (Cincinnati Bell); AT&T Ohio; tw telecom; and CenturyLink. Comments at the workshop were offered by OTA and Cincinnati Bell. Based on the comments provided at the workshop, Ohio Adm.Code 4901-1-6-19(M) was modified in order to be consistent with the FCC's provisions. The August 26, 2015, workshop was attended by representatives of the following: Buckeye Hills-Hocking Valley Regional Development District; OTA; Ohio Cable Telecommunications Association; tw telecom; AT&T; CenturyLink; Ohio Consumers' Counsel; Ohio Poverty Law Center; Appalachian Peace and Justice Network; Advocates for Basic Legal Equality, Inc.; Edgemont Neighborhood Coalition; and Southeastern Ohio Legal Services.

The PUCO also grants other opportunities for stakeholders to provide input on the proposed rules, including the PUCO call center and through the formal comment of the rule review process as set forth in the PUCO's Entries of January 7, 2015, and September 23, 2015.

**9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

No scientific data was used to develop the rules.

**10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The PUCO reviewed the existing rules set forth in Chapter 4901:1-6 and, for the most part, decided that no modifications were necessary as the current rules track, in many respects, R.C. Chapter 4927. Therefore, considerations of alternative regulations were not necessary. In a limited number of cases, the PUCO made some minor modifications to the existing rules for the purpose of clarification. In other cases, some or portions of the existing rule were deleted since they are no longer applicable. The Commission did add a new Ohio Adm.Code 4901:1-6-21 in response to Am. Sub. H.B. 64. In adopting this rule, the Commission limited the requisite obligations to those associated with the protection, welfare, and safety of the public by ensuring the continued accessibility to emergency services.

**11. Did the Agency specifically consider a performance-based regulation? Please explain. *Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.***

No. This chapter by its very nature is largely process driven since it implements procedures and standards that track R.C. Chapter 4927.

**12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

The PUCO has reviewed other Ohio regulations and found no duplication.

**13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

The adoption of Ohio Adm.Code Chapter 4901:1-6 will provide the PUCO with a framework to ensure consistent and predictable application for affected entities as well as to provide guidance to stakeholders when necessary. These rules have been in effect since 2011 without complaints regarding inconsistent application of the Chapter.

**Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

**a. Identify the scope of the impacted business community;**

The scope of the business community impacted by the adoption of Ohio Adm.Code Chapter 4901:1-6 includes regulated telephone companies and their customers.

**b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**

The rules, which have been in effect since the last review, were drafted in an effort to minimize any adverse impact on businesses. While Commission approval is required for the filing of certain applications, most approvals are intended to occur on an automatic basis with minimal time allocated for the purpose of Commission review and/or public input. Other applications are to be simply considered on a zero-day notice basis. Consistent with the adopted Ohio Adm.Code 4901:1-6-21, ILEC providers of BLES and sole providers of voice service must satisfy specified criteria prior to the withdrawal of service.

**c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a "representative business." Please include the source for your information/estimated impact.***

The exact amount of impact of the adopted rules on the business community is unknown at this time.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

With the exception of Ohio Adm.Code 4901:1-6-21, there is no additional recognized impact to the regulated business community or to their customers as these rules will, for the most part, remain the same as they have since their adoption almost four years ago. The only exceptions are the necessary provisions for the purposes of implementing R.C. 4927.10 and 4927.101, as well as the amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11, pursuant to Am. Sub. H.B. 64. With respect to 4901:1-6-21, the regulatory impact is appropriate due to the need to ensure the public safety and welfare relative to the continued accessibility to emergency services.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

The rules provide an impacted entity with the opportunity to seek a waiver of a provision of these rules., where applicable.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The rules in Ohio Adm.Code Chapter 4901:1-6 do not impose specific fines or penalties for failure to comply. Fines or penalties for violation of this chapter may only be ordered by the PUCO after notice and hearing. The PUCO will fully comply with R.C. 119.14 and it is not the PUCO's intent seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Commission Staff works with all affected entities, including small businesses, to assist such companies with compliance.