

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

I. Introduction

The Public Utilities Commission of Ohio (“Commission”) seeks comments on proposed language for three rules in Chapter 4901:1-6 of the Ohio Administrative Code for implementation of the process by which incumbent local exchange carriers (“ILECs”) can withdraw their basic local exchange service (“BLES”). This withdrawal process was statutorily allowed in 2015 by Amended Substitute House Bill 64 of the 131st General Assembly (“House Bill 64”). Newly proposed Rule 6-21 gets it right, following the statutory authorization of Ohio Revised Code Sections (“R.C.”) 4927.07 and 4927.10, and the legislative intent. In Rules 6-02(C), 6-02(D) and 6-07(J), however, the proposals would illegally regulate voice service providers in Ohio, including voice over internet protocol (“VoIP”) service providers who are not subject to Commission regulation today. Additionally, the voice service-related proposals are overbroad, unnecessary, and confusing. Lastly, in Rule 6-02(H), the Commission should not incorporate by reference to federal regulations that do not exist yet when the affected rules are not open for comment.

II. Argument

A. Proposed Rule 6-21: The proposed rule regarding the BLES withdrawal process is consistent with the statutory authorization.

The Commission, as a state agency, can only exercise that authority which the General Assembly specifically delegated to it. *See Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, citing *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 620 N.E.2d 835; *Pike Natural Gas Co. v. Pub. Util. Comm.* (1981), 68 Ohio St.2d 181, 22 O.O.3d 410, 429 N.E.2d 444; *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St.2d 152, 21 O.O.3d 96, 423 N.E.2d 820; and *Dayton Communications Corp. v. Pub. Util. Comm.* (1980), 64 Ohio St.2d 302, 18 O.O.3d 478, 414 N.E.2d 1051.

Proposed Rule 6-21 seeks to establish a new administrative rule for the process by which ILECs may be able to withdraw their BLES. As proposed in Attachment C to the July 2, 2019 Entry, Rule 6-21 corresponds with R.C. 4927.07 and 4927.10 as revised by House Bill 64. Notably, it is now proposed that the two problematic provisions of the earlier version of Rule 6-21 not be included in the rule. *See* Entry at Attachment C, page 3, with 6-21(F) and (G) stricken. The OCTA objected to Rules 6-21(F) and (G) previously¹ and concurs with the July 2, 2019 proposal to not include those provisions in Rule 6-21 for all of the reasons set forth previously by the OCTA. The OCTA will not reiterate in full its earlier arguments about provisions (F) and (G), but incorporates them by reference. Elimination of provisions (F) and (G) is appropriate and consistent with the Commission's statutory authority and avoids rules that unlawfully extend Commission regulation over voice service providers.

¹ *See* OCTA Application for Rehearing (December 30, 2016).

B. Proposed Rules 6-02(C) and 6-07(J): These provisions, regarding notices, exceed the Commission's statutory authority, and are overly broad, unnecessary and confusing.

Proposed Rule 6-02(C) would create a new Commission regulation applicable to VoIP service providers by making them subject to Rule 6-07 in its entirety. Proposed Rule 6-02(C) states:

(C) A provider of interconnected voice over internet protocol-enabled service is exempt from all rules in Chapter 4901:1-6 of the Administrative Code, except for ~~rule 4901:1-6-36 (TRS)~~rules 4901:1-6-07 (customer notice requirements) and 4901:1-6-36 (TRS) of the Administrative Code.

VoIP service providers would be required per proposed Rule 6-07 to give notices to customers, follow what the notices must state, follow the manner in which the notices can be provided, and submit the notices to the Commission. The Commission must reject these proposals because they are not within the Commission's authority, they are overly broad, there is no demonstrated need for these rules and they create a confusing regulatory scheme.

The provision of VoIP services is outside the scope of the Commission's authority. *See* R.C. 4905.02(5)(d), 4905.03 and 4905.04. Under these long-standing statutes, the provision of VoIP service does not qualify as public utility service over which the Commission has the power and jurisdiction to regulate. These Ohio laws do not provide the Commission with authority to impose regulations on the VoIP service providers, even if well-intended. House Bill 64, also, did not provide a basis for new regulations on the VoIP service providers, much less overbroad, unnecessary and confusing requirements on VoIP service providers, or voice service providers in general. There also have not been other statutory changes during the pendency of this proceeding that would justify either Rule 6-02(C) or justify subjecting VoIP service providers to Rule 6-07.

Although the Commission previously cited to R.C. 4927.03(A) as a basis for adopting Rules 6-21(F) and (G) applicable to voice service providers, including VoIP service providers,² the Commission cannot rely on to R.C. 4927.03(A) as a basis for adopting proposed Rules 6-02(C) and 6-07(J). To the extent R.C. 4927.03(A) would allow the Commission to adopt these proposed rules and apply them to VoIP service providers, that statute requires an express finding that the targeted regulation is “necessary for the protection, welfare, and safety of the public.” There has been no such finding in this proceeding as to proposed Rules 6-02(C) and 6-07(J) and importantly, the record contains nothing to support such finding.³ As the OCTA has argued in this proceeding previously, changes to the Commission’s regulations should address the ILEC BLES withdrawal process to the extent set forth in House Bill 64.⁴ The fact that an ILEC might file a BLES withdrawal application in the future does not establish a need for the Commission to regulate VoIP service providers today or adopt rules today that impose sweeping and confusing regulations on all voice service providers.

Additionally, as explained below, these language proposals do not result in targeted necessary regulatory obligations or regulations that make sense. Rule 6-02(C) is improper as it would treat VoIP providers as “telephone companies,” by subjecting VoIP providers to the Commission’s telephone company notice requirements. As the Commission is aware, VoIP providers are not “telephone companies” and are not under the Commission’s general regulatory authority. Proposed Rule 6-02(C) says that VoIP providers are “exempt from all rules in Chapter 4901:1-6 of the Administrative Code, except for rules in 4901:1-07 (customer notice

² Finding and Order at ¶¶ 204-206 (November 30, 2016) and Entry on Rehearing at ¶¶ 88-91, 100-101 (April 5, 2017).

³ Also, with removal of the voice service-related provisions from Rule 6-21(F) and (G), there is no need for Rule 6-02(C).

⁴ See OCTA Application for Rehearing (December 30, 2016); OCTA Comments (October 26, 2015); and OCTA Reply Comments (November 9, 2015).

requirements)....” Multiple sections of proposed Rule 6-07 apply to telephone companies. For example:

- Subsection (A) states in part: “... a telephone company shall provide at least fifteen days advance notice to its affected customers, of any material change in rates, terms, and conditions of a service and any change in the company’s operations....”
- Subsection (B) states in part: “... a telephone company shall provide at least thirty days advance notice to its affected customers in accordance with rules [6-26, 6-25, and 6-14]....”
- Subsection (D) states in part: “... a telephone company shall provide to the commission a copy of the actual customer notice and an affidavit verifying that the customer notice was provided....”

Collectively, proposed Rules 6-02(C) and 6-07 would have the effect of immediately subjecting VoIP providers to multiple regulations to which they are not subject today: regulatory obligations for providing notices to customers, notices to the Commission, and changes in company operations. For example, Rule 6-07(A) requires advance customer notice when there is *any* material change in that company’s own services.⁵ Also, Rule 6-07(B) requires compliance with notice requirements in other Commission rules, namely, Rules 6-26 (abandonment), 6-25 (withdrawal), and 6-14 (BLES pricing parameters) which establish processes for abandonments, service withdrawals, and BLES pricing parameters as well. They do not involve a BLES withdrawal. Rules 6-07(A) and (G) could have the effect of requiring VoIP providers to file applications for Commission review and approval of change in operations. Finally, Rule 6-07(I) would allow the Staff to mandate after-the-fact changes in customer notices and re-issuance of customer notices. These are obligations that do not apply to the provision of VoIP in Ohio today,

⁵ The OCTA notes that the proposal issued July 2, 2019, in this proceeding did not include the language in Rule 6-07(A) that the Commission adopted for Rule 6-07(A) in the HB 402 docket. *In the Matter of the Commission’s Implementation of Substitute House Bill 402 of the 132nd Ohio General Assembly*, Case No. 19-173-TP-ORD, Finding and Order, Attachment A at 6 (May 29, 2019). The OCTA has filed for rehearing in that proceeding and urges the Commission to adopt the OCTA position in the case. Nothing in these comments should be construed as the OCTA changing its position in that case.

but, if adopted, they would be effective regardless of any ILEC BLES withdrawal filing. These obligations should not be imposed on VoIP service providers.

The proposals for Rules 6-02(C) and 6-07 also create a confusing regulatory format. For example, VoIP service providers would not know if they have to comply with all of Rule 6-07, all of Rule 6-25 (which is incorporated by reference), or just Rule 6-07(J). Proposed Rules 6-07(A)-(I) address general notice requirements for telephone companies. Proposed Rule 6-07(J) is newly proposed and is limited to voice service providers. It states:

(J) A provider of voice service shall provide to the Commission and all affected customers not less than thirty days’ notice of any planned discontinuance of such service. Such notice shall be in writing and shall be provided to the director of the service monitoring and enforcement department, the chief of the telecommunications and technology division of the rates and analysis department, and the chief of the telecommunications section of the legal department. Notice may be provided via e-mail, facsimile, overnight mail, or hand delivery. Submission of a copy of any notice required under federal law constitutes sufficient notice under this rule.

Another example is that this language could mandate that non-VoIP voice service providers be required to comply with only Rule 6-07(J), while VoIP service providers would be required to comply with all of Rule 6-07 and all of Rule 6-25 (which is incorporated by reference). The proposals for Rule 6-02(C) and 6-07 also cause confusion because there are mismatched requirements. A brief comparison of the requirements illustrates the confusion because their requirements are not all the same:

Rules 6-07(B) and 6-25: Withdrawal of Telecommunications Services	Proposed Rule 6-07(J): Planned Discontinuance of Voice Service
Give 30 days’ advance notice.	Give 30 days’ advance notice.
Give notice to all affected customers.	Give notice to all affected customers.
Give notice to Commission’s: <ul style="list-style-type: none"> • Chief of the telecommunications division of the utilities department • Chief of the reliability and service analysis 	Give notice to Commission’s: <ul style="list-style-type: none"> • Chief of the telecommunications and technology division of the rates and analysis department

division of Service Monitoring and Enforcement Department	<ul style="list-style-type: none"> • Director of the Service Monitoring and Enforcement Department • Chief of the telecommunications section of the legal department
Give notice to wholesale customers and any telephone company wholesale provider of its services.	N/A
Notify Commission of assigned or to-be-returned area code prefixes and blocks.	N/A
If the service is tariffed, file an application to withdraw and obtain Commission approval.	N/A
Provide notice by any reasonable manner, including bill insert, bill message, direct mail, or, if the customer consents, electronic means.	Provide notice by email, facsimile, overnight mail, or hand delivery.

Finally, it is confusing how a VoIP service provider or a voice service provider can comply with Rule 6-07(B) (which requires compliance with Rule 6-25 withdrawal) and at the same time comply with proposed Rule 6-07(J). For all of these reasons, neither proposed Rule 6-02(C) nor proposed Rule 6-07(J) is appropriate and the Commission should not adopt either one.

C. Proposed Rule 6-02(D): The Commission should not exceed its authority over voice service providers and make them subject to the BLES withdrawal process.

Proposed Rule 6-02(D) states as follows:

(D) A provider of any telecommunications service that, **consistent with section 4927.03 of the Revised Code was is** not commercially available as of September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010, is exempt from all rules set forth in Chapter 4901:1-6 of the Administrative Code, except for **rules 4901:1-6-21 and where applicable, 4901:1-6-36 (TRS) of the Administrative Code**, in the event such provider is subsequently required under federal law to provide to its customers access to **telecommunications relay service TRS**.

Providers of newer telecommunications services can be exempt from certain obligations in Chapter 4901:1-6. However, they cannot be exempt from the BLES withdrawal obligations and the telecommunications relay service when applicable and the latter is federally required. The impact of proposed Rule 6-02(D) is that voice service providers would be subject to the BLES withdrawal

rule even though the proposal would separately eliminate the same kind of language in Rule 6-21(F) and (G). With removal of the voice service-related provisions from Rule 6-21 (which the OCTA supports as explained above), Rule 6-02(D) should not be substantively modified and should only include the following clarifications:

(D) A provider of any telecommunications service that was is not commercially available as of September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010, is exempt from all rules set forth in Chapter 4901:1-6 of the Administrative Code, except for rule 4901:1-6-36 (TRS) of the Administrative Code, in the event such provider is subsequently required under federal law to provide to its customers access to ~~telecommunications relay service~~ TRS.

D. Proposed Rule 6-02(H): The Commission should not incorporate by reference to not-existent federal regulations by modifying the trigger date when the affected rules are not open for comment.

Proposed Rule 6-02(H) states that all references to federal regulations in Chapter 4901:1-6 will be to the version of the federal regulations in effect on October 1, 2019. Those versions of the federal regulations are not in effect and nearly all rules in Chapter 4901:1-6 affected by that date change are not open for comment in this phase of the proceeding.

Most of the rules in Chapter 4901:1-6 that incorporate federal regulations by reference were adopted in a prior phase of this proceeding – and have already been approved by the Joint Committee on Agency Rule Review and finalized with the trigger date of September 13, 2010.

They are not now under a new review. Below are many such examples:

Rule 6-08(E)(5)	Minimum information for certification
Rule 6-09	Eligible telecommunications carriers
Rule 6-11(A)(1)	Services required to be tariffed
Rule 6-16	Unfair or deceptive acts and practices
Rule 6-17	Truth in billing requirements
Rule 6-18	Slamming and preferred carrier freezes
Rule 6-19	Lifeline requirements.
Rule 6-22	Inmate operator service
Rule 6-24	Wireless service provisions.
Rule 6-28	Bankruptcy
Rule 6-29	Changes in operations

Rule 6-31	Emergency and outage operations
Rule 6-35	Federal Communications Commission reports
Rule 6-36	Telecommunication relay services assessment procedures

Parties cannot effectively comment today on changes for these rules, if any, because of the new incorporation by reference date in proposed Rule 6-02(H). The Commission should not modify Rule 6-02(H); instead, it should retain the rule as is: “Each citation contained within this chapter that is made either to a section of the United States Code or a regulation in the code of federal regulation is intended, and shall serve, to incorporate by reference the particular version of the cited matter that was effective on September 13, 2010.” The Commission can evaluate this issue in a comprehensive and coordinated manner that is fair to the parties when it next undertakes a new review of the entire chapter.

III. Conclusion

The proposal has properly developed the BLES withdrawal rule (Rule 6-21) for Chapter 4901:1-6 so that it corresponds with the Commission’s statutory authority and the legislative intent. The proposals for Rules 6-02(C), 6-07(J), 6-02(D) and 6-02(H), however, are not proper. The Commission should take the necessary steps recommended above by the OCTA to adopt administrative rules in line with Ohio’s statutory framework for VoIP and voice services, and in the future review the incorporation by reference provision at the same time as the affected rules.

Respectfully submitted,

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Summary: Comments -- Initial Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association