

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

ENTRY

Entered in the Journal on August 25, 2021

I. SUMMARY

{¶ 1} The Commission requests comment on a new rule regarding the withdrawal or abandonment of basic local exchange service or voice service by a provider of telecommunications service. Initial comments are due by September 1, 2021, and reply comments are due by September 10, 2021.

II. DISCUSSION

{¶ 2} R.C. 111.15(B) requires all state agencies 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. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;
- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference

would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;

- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determine under R.C. 107.52;
- (g) Contain words or phrases having meanings that, in contemporary usage, are understood as being derogatory or offensive; and
- (h) Requires liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 4} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 5} 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 impacting the telephone industry as outlined in Ohio Adm.Code Chapter 4901:1-6. During this five-year review of the rules in Ohio Adm.Code

Chapter 4901:1-6, the 131st Ohio General Assembly passed additional legislation impacting the telephone industry. This legislation, Am. Sub. House Bill 64 (H.B. 64), directed the Commission to draft rules that, in part, establish a procedure by which an incumbent local exchange carrier may seek to withdraw or abandon the provision of basic local exchange service. Thereafter, the Commission determined that this docket was the appropriate vehicle to consider the rulemaking required by H.B. 64.

{¶ 6} 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.

{¶ 7} Five rounds of rehearing ensued with the most recent Entry on Rehearing being issued on October 4, 2017.

{¶ 8} Ohio Adm.Code Chapter 4901:1-6 was then filed with the Joint Committee on Agency Rule Review (JCARR). During the JCARR rule review, the Commission pulled several rules from the rule review process for further consideration by the Commission. One of those rules was the new rule identified as Ohio AdmCode 4901:1-6-21 entitled “Carrier's withdrawal or abandonment of basic local exchange service (BLES) or voice service.”

{¶ 9} At this time, the Commission issues modified, proposed Ohio Adm.Code 4901:1-6-21 attached to this Entry for comment. Initial comments are due on September 1, 2021 and reply comments are due on September 10, 2021.

{¶ 10} The modified, proposed rule adds relevant details to the process that a carrier will utilize in filing for the withdrawal or abandonment of BLES. Importantly, the modified, proposed rule also includes critical provisions to safeguard the protection, welfare, and safety of the public for purposes of ensuring that Ohioans have access to call emergency

service providers and 9-1-1 authorities. In both the November 30, 2016 Finding and Order and the Second Entry on Rehearing issued April 7, 2017, the Commission specifically noted that R.C. 4927.03(A) gives the Commission jurisdiction over services that the General Assembly otherwise prohibited us from regulating if the exercise of such Commission authority is necessary for the protection, welfare, and safety of the public and the Commission adopts rules specifying the necessary regulation. Proposed Ohio Adm.Code 4901:1-6-21 is narrowly tailored to achieve that goal. Adoption of this rule will give meaning to the critical safeguard that the General Assembly recognized when enacting the safety and welfare provisions of R.C. 4927.03(A).

III. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That comments regarding proposed Ohio Adm.Code 4901:1-6-21 be filed in accordance with Paragraph 9. It is, further,

{¶ 13} ORDERED, That a copy of this Entry be served upon all commenters and interested persons of record in this matter.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JRJ/mef

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NEW

4901:1-6-21 Carrier's withdrawal or abandonment of basic local exchange service (BLES) or voice service.

- (A) The collaborative process established under section 749.10 of amended substitute House Bill 64 of the 131st General Assembly will review the number and characteristics of basic local exchange service customers, evaluate what alternative reasonable and comparatively priced voice services are available to residential BLES customers and the prospect of the availability of a reasonable and comparatively priced voice service where none exist. This will be done for the purpose of identifying any exchanges or residential BLES customers with the potential to not have access to a reasonable and comparatively priced voice service. For purposes of rule 4901:1-6-21 of the Administrative Code, “reasonable and comparatively priced voice service” is a voice service that satisfies the definition set forth in division (B)(3) of section 4927.10 of the Revised Code. A voice service is presumptively deemed competitively priced, subject to rebuttal, if the rate does not exceed either: (1) the incumbent local exchange carriers’ (ILEC) BLES rate by more than twenty percent or; (2) the federal communications commission’s (FCC) urban rate floor as defined in 47 C.F.R. 54.313(a)(2).
- (B) An ILEC cannot discontinue offering BLES within an exchange without filing a notice for the withdrawal of BLES (WBL) to withdraw such service from its tariff. Receipt of this notice by the commission, will trigger the one hundred and twenty-day statutory time frame allotted for the commission investigation set forth in division (B) of section 4927.10 of the Revised Code. As part of this notice and investigation process an ILEC has to provide the following:
- (1) A copy of the FCC order that allows the ILEC to withdraw the interstate-access component of its BLES under 47 U.S.C. 214 or other evidence that the FCC has automatically approved the ILEC’s application to withdraw the interstate access component of its BLES.
 - (2) A copy of the notice of the withdrawal or abandonment of BLES sent to all affected customers no later than the day the notice for the withdrawal of BLES is filed with the commission to ensure that affected customers have at least one hundred and twenty days notice before the ILEC withdraws or abandons BLES. The notice has to include a provision stating that those affected customers unable to obtain reasonable and comparatively priced voice service have the right to file a petition with the commission and the earliest date upon which the affected customer's BLES will be discontinued. The notice needs to provide the affected customers with the commission's and the office of the Ohio consumers’ counsel’s (OCC) mailing address, toll-free telephone number, and website address for additional information regarding the notice of the withdrawal or abandonment of BLES and filing of a petition. For purposes of rule 4901:1-6-21 of the

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Administrative Code, "affected customers" means a residential customer receiving BLES that will be discontinued by the withdrawing or abandoning ILEC.

- (3) A copy of the notice published concurrent to the WBL filing. The notice has to be published one-time in the non-legal section of a newspaper of general circulation throughout the area subject to the application. The notice needs to provide the affected customers with the commission's and OCC's toll-free telephone number and website address for additional information regarding the application and filing of a petition.
 - (4) An attachment to the notice will have to either: (1) reference any finding of providers of reasonable and comparatively priced voice service, identified by the collaborative process established under section 749.10 of amended substitute House Bill 64 of the 131st General Assembly, offering that voice service in the exchanges the ILEC is withdrawing or abandoning BLES with this notice; or (2) identify a provider of a reasonable and comparatively priced voice service offering that service, as of the date of the notice filing, to affected customers, regardless of the technology or facilities used by the provider. All affected customers do not have to receive service from the same provider of reasonable and comparatively priced voice service.
 - (5) A clear and detailed description, including a map, of the geographic boundary of the ILEC's service area to which the requested withdrawal would apply.
- (C) If a residential customer to whom notice has been given, pursuant to paragraph (B)(2) of this rule, is unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by an ILEC, the customer or their authorized representative may file a petition, in the assigned WBL case number, with the commission within thirty-days of receiving the notice. For purposes of this rule, a petition is a written statement in any format from an affected customer claiming that the customer will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by an ILEC. Alternatively, if a residential customer is identified by the collaborative process established under section 749.10 of amended substitute House Bill 64 of the 131st General Assembly as a customer who will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by an ILEC, that customer will be treated as though the customer filed a timely petition.
- (D) If no affected residential customers file a petition and no residential customers are identified by the collaborative process set forth in section 749.10 of amended substitute House Bill 64 of the 131st General Assembly, the ILEC's notice to withdraw or abandon will be deemed to have satisfied the requirements to withdraw or abandon BLES pursuant to section 4927.10 of the Revised Code.

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- (E) If the commission’s investigation determines that no reasonable and comparatively priced voice service is available to the customer, identified in paragraph (C) of this rule, at the customer’s residence and the commission cannot identify a willing provider of a reasonable and comparatively priced voice service to serve the customer, the ILEC requesting the withdrawal or abandonment will have to provide a reasonable and comparatively priced voice service, via any technology or service arrangement, to the customer at the customer's residence for not less than twelve months from the date of the order issued by this commission. This order will also address all petitions filed or all customers identified through the collaborative process. For purposes of rule 4901:1-6-21 of the Administrative Code, “willing provider” is any provider, identified by the commission through its investigation process, voluntarily offering a reasonable and comparatively priced voice service at the customer's residence, to any residential customer affected by the withdrawal or abandonment of BLES.
- (1) If after the initial twelve-month period, the commission has not identified a willing provider of a reasonable and comparatively priced voice service to serve the customers, identified in paragraph (C) of this rule, the ILEC requesting the withdrawal or abandonment will have to continue to provide a reasonable and comparatively priced voice service, via any technology or service arrangement, to the customer at the customer’s residence for an additional twelve-month period.
- (2) If after the second twelve-month period, the commission has not identified a willing provider of a reasonable and comparatively priced voice service to serve the customers, identified in paragraph (C) of this rule, the ILEC requesting the withdrawal or abandonment will have to continue to provide a reasonable and comparatively priced voice service, via any technology or service arrangement, to the customer at the customer’s residence until otherwise authorized by the commission.
- (F) If the sole provider of voice service seeks to withdraw or abandon such voice service, it has to notify the Commission at least thirty days prior to the withdrawal or abandonment through the filing of a withdrawal of voice service (WVS) consistent with the authority granted to the commission in division (A) of section 4927.03 of the Revised Code.
- (G) If the Commission determines that: (1) a residential customer of voice service will not have access to 9-1-1 service if the customer’s current provider withdraws or abandons its voice service; or (2) the current provider of voice service is the sole provider of emergency services to residential customers, pursuant to the authority granted to the commission in division (A) of section 4927.03 of the Revised Code, that provider may be subject to all the provisions of this rule, on a case-by-case basis.

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Case No(s). 14-1554-TP-ORD

Summary: Entry requesting comment on a new rule regarding the withdrawal or abandonment of basic local exchange service or voice service by a provider of telecommunications service. Initial comments are due by September 1, 2021, and reply comments are due by September 10, 2021. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio