

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY COMMENTS OF
THE OHIO TELECOM ASSOCIATION**

I. INTRODUCTION

R.C. 4927.10 permits an incumbent local exchange company ("ILEC") to withdraw or abandon the provision of basic local exchange service ("BLES") if the FCC adopts an order that allows the ILEC to withdraw the interstate-access component of its BLES. To implement R.C. 4927.10, the Public Utilities Commission of Ohio ("Commission") proposes Rule 4901:1-6-21. Entry (Aug. 25, 2021) ("Entry"). In initial comments jointly filed on September 1, 2021, the Office of the Ohio Consumers Counsel and several other consumer advocates ("OCC") recommend that the Commission narrow the scope of the rebuttable presumption the Commission proposes as part of the definition of reasonable and comparatively priced voice service, increase notice provisions, and delay customer notification until an FCC order addressing the withdrawal of the interstate portion of BLES is final.¹ The Commission should reject each of these recommendations.

II. ARGUMENT

¹ Consumer Protection Comments Regarding Local Telephone Company Abandonment of Consumers' Essential 9-1-1 Emergency and Basic Local Telephone Services by Advocates for Basic Legal Equality, Inc., Legal Aid Society of Columbus, Office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., Southwestern Ohio Legal Services (Sept. 1, 2021) ("OCC Comments").

1. OCC's recommendation to revise the rebuttable presumption so that it applies if a competitive service is available at the lesser of 20% of the ILEC's price or the urban rate floor should be rejected because it is neither lawful nor reasonable

R.C. 4927.10 provides a procedure by which an ILEC may withdraw from the provision of BLES, but the withdrawal is conditioned on an FCC order permitting abandonment of the interstate portions of the service. R.C. 4927.10(A). Then, the opportunity to withdraw is conditioned on the identification of a willing provider of "reasonable and comparatively priced voice service to serve a customer" if a customer claims that he is unable to obtain such service in a petition to the Commission. R.C. 4927.10(B)(1). If a reasonable and comparatively priced alternative cannot be found, then the ILEC is required to continue service, potentially indefinitely. R.C. 4927.10(B)(2). Further, the Commission is to assume that customers determined through a collaborative process under section 749.10 to be unable to obtain a reasonable and comparatively priced service to have filed a timely petition to delay or prohibit withdrawal of service. R.C. 4927.10(B)(1).

R.C. 4927.10(B)(3) provides the applicable definition of "reasonable and comparatively priced voice service":

For purposes of this division, the public utilities commission shall 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.

Proposed Rule 4901:1-06-21(A) proposes to extend the definition of what is a competitively priced service, providing: "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)." Entry, Attachment A at 1. As noted in prior comments, the expanded definition exceeds the Commission's authority and

is unreasonable. Comments of Ohio Telecom Association at 2-4 (Sept. 1, 2021) (“OTA Comments”).

In its comments, OCC recommends changes that would make the unreasonable rule worse. It claims that the current proposed rebuttable presumption is vague and might result in rate shock if the rebuttable presumption is not rebutted. OCC Comments at 4. Based on this alleged rate shock, OCC then recommends that the Commission should modify the rule to limit the rebuttable presumption’s application to those instances when the price of the alternative service is the lesser of 20% above the ILEC’s price or below the urban rate floor. *Id.* at 5.

Initially, there is nothing vague about the text of the rebuttable presumption. It provides that the price of an alternative is presumed reasonable and comparatively priced if it does not exceed the higher of 20% of the BLES price or the urban rate floor. Thus, the service is rebuttably presumed to be reasonable and comparatively priced if either test is met.

Were that not clear enough, the Commission’s 2016 Finding and Order revising the proposed rule to include the rebuttable presumption provides the same explanation: the ILEC may demonstrate that an alternative service is reasonably priced by showing that the price does not exceed 20% of the ILEC’s price, or if that is not the case, then the urban rate floor. Finding and Order ¶¶ 45-47 (Nov. 30, 2016).

The proposed rule’s clarity, however, does not address the lack of legal authority supporting it, and the recommendation by OCC suffers the same problem: it ignores the statutory definition. Moreover, OCC’s Comments do not provide any legal authority to support its recommendation to insert its version of a presumption in the rule.

Additionally, OCC’s argument is premised on a hypothetical customer without alternatives. Without reference to any study, OCC simply asserts that there are customers that will

lack reasonable and comparatively priced voice service. Rather than demonstrate some support for this claim, it points to problems with access to broadband service. OCC Comments at 1-2. The issue addressed here, however, is access to voice service, and OCC offers nothing in regard to a lack of alternatives other than a reference to a Washington Post article that some rural areas have poor cell service. In fact, the area in Ohio not served by at least one LTE provider is exceedingly small. See <https://www.fcc.gov/reports-research/maps/lte-coverage-number-providers-ye-2018/>. Moreover, if the price of alternative service is an issue in some areas, the Commission can order the ILEC to continue to provide service until a reasonable alternative is found. Thus, the whole argument to support its tightened definition of the rebuttable presumption is based on a supposition that there will be harm to a residential customer without a remedy. The supposition is false.

Finally, OCC's proposal to further limit the rebuttable presumption ignores the Commission's stated purpose in adopting language that permits its application at the higher of 20% of the BLES price or the urban rate floor. According to the Commission, the 20% limit recognized that R.C. 4927.10 was adopted with the expectation that it will encourage the transition from the current public switched network to an Internet protocol network and that a 20% markup over BLES was a reasonable approximation of the economic realities of the adoption of a more advanced network. Finding and Order ¶ 45 (Nov. 30, 2016). Because the rates of some ILECs remained relatively low, the Commission also afforded an ILEC the alternative of demonstrating that the reasonable and comparatively priced service's price did not exceed the urban rate floor "should the price of the alternative voice service not comply with the 20 percent markup." *Id.*, ¶ 46. OCC's recommendation to tighten the rebuttable presumption to the lower of 20% of the ILEC's BLES price or the urban rate floor would do nothing to encourage a transition toward the stated goal of broadband access; if anything it would discourage those efforts.

The Commission's previous attempt to rationalize the introduction of a rebuttable presumption, however, still does not provide a lawful and reasonable rule. OTA Comments at 2-4. See, also, Application for Rehearing of the Ohio Telecom Association at 4-6 (Dec. 30, 2016). OCC's attempt to narrow the presumption would make the proposed rule worse since it would frustrate the opportunity to replace the existing legacy network. Moreover, the recommendation is not needed. Given all the protective mechanisms already built into R.C. 4927.10, there is no reasoned basis to support the claim that OCC's hypothetical customer will be harmed if an ILEC decides to withdraw BLES.

2. OCC's recommendation to require separate and repeated notices should be rejected because it is unreasonable

As an initial step to effect a withdrawal of BLES, R.C. 4927.10(A)(1) requires that the ILEC must provide at least one hundred twenty days' prior notice to the public utilities commission and to its affected customers of the withdrawal or abandonment. Further, the proposed rule provides that the notice explain that a customer may petition the Commission and the earliest date upon which the customer's service may be discontinued. Entry, Attachment A at 1.

Apart from the notice, however, there are other steps that protect a customer's access to voice service if an ILEC chooses to withdraw BLES. First, the ILEC, as previously mentioned, will have filed with the Commission a notice announcing its intention to withdraw BLES, at which point the public, including OCC, will be aware that the withdrawal is pending. *Id.* Second, in some instances the Commission is required to treat those customers identified by the collaborative process as petitioners claiming they lack reasonable and comparatively priced voice service. R.C. 4927.10(B). Third, none of the state process can begin until the ILEC has received an order from the FCC in a Section 214 proceeding that permits the ILEC to withdraw the interstate access component of BLES service. R.C. 4927.10(A). In summary, there are at least three points in the

process where the customer or the consumer advocate are aware that the ILEC intends to withdraw service.

Despite all the safeguards already provided by federal and Ohio law, OCC urges the Commission to require separate mailings of the notice of withdrawal to affected customers. Additionally, it urges that these notices be repeated monthly until the withdrawal is complete. OCC Comments at 5-7.

This proposed change is not required or necessary and would be unduly burdensome.

First, the additional and separate notices are not required by R.C. 4927.10. The statutory requirement specifies only the timing, not the form. Moreover, it provides for a single notification, not multiple ones. The provision for a single notice and no designation of form stands in stark contrast to what is required in a case involving an application to increase rates. In a rate case, the applicant is required to provide multiple public notices. R.C. 4909.19. Had the General Assembly intended additional notifications, it could have chosen words to that effect. *Discount Cellular, Inc. v. Pub. Utils. Comm'n of Ohio*, 112 Ohio St. 3d 360, ¶ 30 (2007). It did not. Accordingly, the Commission is not required to adopt OCC's recommendation to conform its proposed rule to the statutory requirement for an ILEC to provide notice.

Second, the multiple notices are not needed because there are already sufficient safeguards in place, as discussed above.

Third, what OCC is proposing is unduly burdensome. As the Commission is aware from its many proceedings dealing with customer notifications, mailing individual notices is expensive. Requiring three or four notifications only adds to the expense when such expense is unnecessary because of the other safeguards for those that miss or do not understand the importance of the required notification.

Accordingly, the Commission should reject OCC's recommendation that the rule provide for monthly and separate notifications of the ILEC's planned withdrawal of BLES.

3. OCC's recommendation to prohibit a withdrawing ILEC from sending notice of withdrawal or abandonment until the FCC order approving abandonment of the interstate portion of BLES is final should be rejected because it is neither lawful nor reasonable

R.C. 4927.10 provides that an ILEC is relieved from the requirement under R.C. 4927.11 to provide BLES "if the federal communications commission adopts an order that allows an incumbent local exchange carrier to withdraw the interstate-access component of its basic local exchange service under 47 U.S.C. 214, ... *beginning when the order is adopted*, with regard to any exchange area in which an incumbent local exchange carrier withdraws that component." (Emphasis added.) OCC urges the Commission to prohibit the right to withdraw provided by R.C. 4927.10 until a final FCC order is issued because the FCC might change its order on reconsideration. OCC Comments at 7-9.

The reasons for rejecting this recommendation are as true now as there were in 2017 when the Commission rejected an identical request. Addressing this recommendation previously, the Commission noted that the triggering event of the commencement of the process for an ILEC's abandonment of BLES is the adoption of an FCC order, not a final order. Once adopted, the FCC order, unless stayed, is lawful and effective even if a party later files a petition for reconsideration. Therefore, if the ILEC demonstrates that it has secured the FCC order, the withdrawal process can lawfully commence. It is not required to further delay its notification of its intention to withdraw until the FCC order becomes final. Fourth Entry on Rehearing ¶ 36 (Aug. 9, 2017).

Second, OCC's recommendation could result in substantial delay. The mere act of filing a request for reconsideration, regardless of its validity, could result in unlimited delay because there

is no time limit for a decision on a petition for reconsideration by the FCC. *Id.*, ¶ 35, referencing memorandum contra of AT&T Ohio.

Finally, the harms of a reversal of an FCC order alleged by OCC are at best hypothetical because they are premised on the FCC's reversing a prior order after a withdrawal has occurred. Given the factually intense review inherent in a determination that withdrawal of the interstate component of BLES is in the public interest by the FCC, the likelihood of a reversal would be small. Moreover, state law provides that the ILEC may not withdraw if reasonable and comparatively priced service is not available, and that prohibition can be of indefinite duration for an adversely affected customer. Thus, both the requirement for an FCC order and the state law limits on withdrawal of BLES serve as further protections for the OCC's hypothetical customer.

Accordingly, the Commission should reject OCC's recommendation to condition the right of an ILEC to provide notice upon receipt of a final FCC order, as it previously did. *Id.*, ¶ 36.

III. CONCLUSION

OCC seeks to insert requirements concerning the abandonment or withdrawal of BLES that are beyond the needs of consumers and impose unlawful and unreasonable burdens on the withdrawing carrier. Because the recommendations are not warranted by a sound interpretation of R.C. 4927.10, the Commission should reject them.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)
Counsel of Record for Ohio Telecom Association
6800 Linbrook Blvd.
Columbus, Ohio 43235
(willing to accept service via email)
Fdarr2019@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Reply Comments of the Ohio Telecom Association* will be served by the tenth day of September 2021, pursuant to the procedures established by the Document Information System under Rule 4901-1-05. The copy was also served by email to the following persons.

/s/ Frank P. Darr

Frank P. Darr

Dt1329@att.com
glpetrucci@vorys.com
Patrick.crotty@cinbell.com
ejacobs@ablelaw.org
nmorgan@lascinti.org
msmalz@ohiopoveritylaw.org
mwalters@proseniors.org
plee@oslsa.org
William.haas@t-mobile.com
David.vehslage@verizon.com
Glenn.richards@pillsburylaw.com
Jeffrey.jones@puc.state.oh.us
Jay.agranoff@puc.state.oh.us
Karen.wolf@motorolasolutions.com
Ambrosia.wilson@occ.ohio.gov
Jamie.williams@occ.ohio.gov
Michele.noble@squirepb.com
Mo2753@att.com
Joseph.cohen@pillsburylaw.com
dhart@douglasshart.com
Deborah.kuhn@verizon.com
Jk2961@att.com
Matthew.myers@upnfiber.com
Kathy.l.buckley@verizon.com
stnours@aep.com
sjagers@ohiopoveritylaw.org
merville@columbuslegalaid.org
aasanyal@vorys.com
jonfkelly@sbcglobal.net

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/10/2021 9:27:40 AM

in

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

Summary: Reply Reply Comments of the Ohio Telecom Association electronically filed by Frank P. Darr on behalf of Ohio Telecom Association