BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY COMMENTS OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION
TO PROPOSED OHIO ADM.CODE 4901:1-6-21

I. Introduction

The Ohio Cable Telecommunications Association ("OCTA") responds to the comments filed by six consumer groups[1] on September 1, 2021, because their requested changes to proposed Rule 4901:1-6-21 are inconsistent with the language and framework of Ohio Revised Code Section ("R.C.") 4927.10 – the enabling statute. Certain of those changes were twice rejected by the Commission in this proceeding and should be rejected again. Importantly, the Consumer Groups' changes would adversely affect voice service providers if proposed provisions (F) and (G) are not removed from the rule. This is because the Consumer Groups' positions are based on an improper premise that Rule 4901:1-6-21 should establish a process for *all* companies who seek to withdraw basic local exchange services ("BLES") – not just BLES withdrawals filed by the incumbent local exchange carriers ("ILECs") as stated in R.C. 4927.10.[2] The OCTA has explained in multiple phases of this proceeding how provisions (F) and (G) do not comply with Ohio law and are harmful. The OCTA incorporates those arguments here as

[1] Those commenters were jointly filed 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.; and Southeastern Ohio Legal Services (collectively, "Consumer Groups").

[2] Consumer Groups' September 1 Comments at 2 ("The rule should not be amended to reduce consumers' access to essential services.") and at 3 ("This rule determines what happens when **a telephone company** files to abandon basic local telephone service….").

well. Without removal of those two provisions from Rule 4901:1-6-21, the improper revisions sought by the Consumer Groups could be interpreted to apply to *any* voice service providers operating now and in the future (contrary to the language of the enabling statute). OCTA members then would be forced to adhere to requirements that do not comply with R.C. 4927.10, and would be precluded from withdrawing a service that today they can withdraw without additional regulatory obligations and additional expense. The Consumer Groups' changes would directly affect the OCTA members, and therefore the OCTA urges the Commission to reject the changes as unlawful, inappropriate and unreasonable.

II. Argument

A. The Consumer Groups' suggestions for provisions (A), (B)(1) and (B)(2) conflict with R.C. 4927.10.

The Consumer Groups proposed changes to provisions (A), (B)(1) and (B)(2) of proposed Rule 4901:1-6-21 conflict with the enabling statute and should not be adopted.

First, with regard to provision (A), the Consumer Groups claim that the manner proposed to presume that a voice service is "reasonable and comparatively priced" is "vague."[3] The Consumer Groups request the following changes:[4]

> A voice service is presumptively deemed ~~**competitively**~~ **comparatively** priced, subject to rebuttal, if the rate does not exceed ~~**either**~~ **the lesser of**: (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).

[3] Consumer Groups' September 1 Comments at 4-5. The Consumer Groups' claim of vagueness is apparently because the price can be presumed to be reasonable and competitively priced if it is priced based on either one of two measures – the ILEC's BLES rate plus 20%, or the FCC's urban rate. There is no vagueness because, if the voice service price is up to either one of the delineated options, there is a presumption that it is reasonable and competitively priced, and that presumption can be rebutted. Moreover, the two options are publicly available measures. Given that the Consumer Groups incorporate the same two options in their proposed "clarifications," they undercut their claim of vagueness.

[4] Consumer Groups' September 1 Comments at 5.

The Consumer Groups' proposed revisions, however, conflict with R.C. 4927.10(B)(3) and therefore should not be adopted. The legislature directed the Commission to define the term "reasonable and comparatively priced voice service" to include voice service that is "competitively priced, when considering all the alternatives in the marketplace and their functionalities." The Consumer Groups' language would impermissibly restrict the concept in the statute of "competitively priced," and therefore, does not conform to the legislative directive. Also, the Consumer Groups' language proposes that a voice service be presumed to be "comparative" only if it is *at or below* the ILEC BLES rate plus 20%, or the FCC urban rate floor (now obsolete),[5] whichever is the lowest. It is illogical that a price can only be "comparative" (which should be "competitive" to correspond with the statute) if it is at or below the lowest price. More important, this view is not supported by the enabling law: R.C. 4927.10(B)(3) does not state that "competitively priced" can only be at or below the lowest price or the national average price (at least some of the competitive prices in the FCC's survey are by definition above average). For these reasons, the Commission should reject the Consumer Groups' requested revisions to provision (A).

Second, with regard to the proposed provision addressing the information that must be provided to the Commission, the Consumer Groups argue that provision (B)(1) should be revised to state that the ILEC can provide only a copy of the final FCC order and, until the final FCC order is presented, the 120-day period of R.C. 4927.10(A)(1) cannot be triggered.[6] Currently,

[5] The FCC urban rate floor was repealed in 2019 (*In the Matter of Connect America Fund*, Report and Order, WC Docket No. 10-90, FCC 19-32 (April 15, 2019). The FCC still calculates the average rate for voice service that was formerly used in determining the urban rate floor, however. The current urban rate average for "Unlimited of Flat-Rate Local Service" is $33.73. https://www.fcc.gov/economics-analytics/industry-analysis-division/urban-rate-survey-data-resources. The current version of 47 CFR 54.313(a)(2) sets a ceiling, not a floor, of "no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau." The FCC calculated two standard deviations above the national average rate as $54.75 in the report linked above.

[6] Consumer Groups' September 1 Comments at 7-8.

proposed provision (B)(1) would require a copy of the FCC order allowing the ILEC's withdrawal of the interstate access component of BLES or other evidence of an automatic FCC approval of such a request. The effect of the Consumer Groups' request is to delay the filing of a withdrawal notice at the Commission. This request must fail because R.C. 4927.10(A) allows otherwise. If the FCC *adopts* an order allowing the ILEC to withdraw the interstate access component of its BLES, the ILEC is permitted to file notice with the Commission to withdraw its BLES, which triggers the 120-day period. The Consumer Groups' revision to the rule, however, improperly burdens the process set forth in R.C. 4927.10(A)(1) by preventing (1) the ILEC from taking action at the state level until the FCC issues a *final* order, and (2) the 120-day period from starting until there is a *final* FCC order. While the Consumer Groups may not like the language in R.C. 4927.10(A), the Commission is a creature of statute and has no authority to act beyond its statutory powers. *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51. It cannot ignore the statute or adopt rules that are inconsistent with it.

Importantly, Commission precedent supports denial of the Consumer Groups' language for provision (B)(1). Twice in this proceeding, the Commission has rejected this same "final FCC order" request from the Consumer Groups. On April 5, 2017, in its Second Entry on Rehearing, the Commission did not modify provision (B)(1) as the Consumer Groups requested, stating at ¶ 66 "… it is clear that the General Assembly intended to tie the FCC's adoption of an order allowing an ILEC to withdraw the interstate access component of its BLES to the filing of

a notice for the withdrawal of basic service."[7] The Commission again confirmed the statutory process on August 9, 2017, in the Fourth Entry on Rehearing, stating at ¶ 36:

> … pursuant [to] 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.

Emphasis added. The language of R.C. 4927.10(A) remains the same today and the Commission should swiftly reject this repeated request – as it still remains contrary to R. C. 4917.10(A).

Third, the Consumer Groups propose that provision (B)(2) be revised to unreasonably require (1) multiple notices of the withdrawal be given to the affected customers, and (2) the notices be provided continuously – every 30 days until any withdrawal is final.[8] These notice-related revisions should be denied as they too are contrary to R.C. 4927.10. First, R.C. 4927.10(A)(1) requires the ILEC to give "notice" to the affected customers at least 120 days prior to the withdrawal. The statute does not require or permit multiple notices or suggest multiple rounds of the same notice should be given to the affected customers. The General Assembly could have included language requiring the ILEC to give multiple notices to the affected customers, but it included no such language. The Commission, therefore, does not have the authority to require such in its rules and should deny these requested changes to provision (B)(2). In addition, giving notices every 30 days potentially conflicts with the concept in the statute that the affected customers have at least 120 days' notice before the withdrawal because the repeated notices could effectively re-start the 120-day clock with each subsequent notice. This is an additional reason for rejecting that these requested changes to provision (B)(2).

[7] *See* Entry on Rehearing, Attachment A page 37 of 60 (April 5, 2017).

[8] Consumer Groups' September 1 Comments at 5-7. The Consumer Groups also request that provision (B)(2) require the customer notice be mailed or emailed separately from the bill, with a specific prominent message. The OCTA is not addressing that request at this time.

Finally, to the extent that the Consumer Groups request multiple notices to educate or influence customers to file petitions in response to the notice, they ignore the multiple steps already involved in the withdrawal process:

- Prior to a notice being filed with the Commission, the ILEC would have applied to the FCC to withdraw the interstate-access component of its BLES. The FCC process requires the ILEC to notify the affected customers in writing and they have the opportunity to participate in the FCC proceeding. *See* 47 CFR § 63.71. Note, that the FCC also takes into consideration whether there is a replacement service. *See e.g.* 47 CFR §§ 63.71(a)(5)(i) and (ii).

- The collaborative established by Amended Substitute House Bill 64 is to plan an education campaign for affected customers and can identify affected residential customers for Commission consideration. *See* Section 749.10 of amended Substitute House Bill 64.

Requiring multiple notices to affected customers is inconsistent with the enabling statute and its framework. And, there is no evidence before the Commission that additional notices would be helpful as opposed to confusing to consumers. Accordingly, requiring multiple notices in provision (B)(2) should be rejected.

B. The Consumer Groups' suggestions would harm voice service providers.

The changes sought by the Consumer Groups would appear at first glance to only apply to the ILEC when it seeks to withdraw BLES. A careful and complete review of proposed Rule 4901:1-6-21, however, suggests that the changes for provisions (A), (B)(1) and (B)(2) may apply to any voice service provider as well – by virtue of proposed provisions (F) and (G). OCTA members offer or may offer in the future telephone service using a switched network, and they offer or may offer voice service through internet protocol-enabled services in Ohio. Thus, the OCTA membership would be affected by the Consumer Groups' proposed changes. In their comments supporting Rule 4901:1-6-21 as proposed, the Consumer Groups acknowledge that rule as proposed would expand the scope of those subject to regulation, urge that this proposed

scope not be "reduced," and also recommend further changes without any language limiting the application of those changes to ILEC withdrawals.[9]

Voice service providers, like the ILECs, should not be subjected to regulatory rules that conflict with the enabling statute, do not comport with other Ohio laws, and are otherwise inappropriate and unreasonable. As the OCTA has explained in its prior comments and applications for rehearing in this proceeding (which are incorporated herein),[10] provisions (F) and (G) are impermissible and should be removed from proposed Rule 4901:1-6-21. Additionally, the changes proposed by the Consumer Groups do not resolve this problem – they exacerbate it by adding further unlawful, inappropriate and unreasonable language to proposed Rule 4901:1-6-21. Voice service providers should not be subjected to such additional regulatory requirements. The Consumer Groups' changes should be rejected for all the reasons set forth above, and provisions (F) and (G) should be removed from proposed Rule 4901:1-21 for reasons argued previously in this proceeding.

III. Conclusion

The Commission should remove proposed provisions (F) and (G) for the many reasons strongly presented by the OCTA and others in this proceeding. In addition, the Commission should reject the inappropriate and unreasonable changes to provisions (A), (B)(1) and (B)(2) presented by the Consumer Groups. Because those changes do not comply with R.C. 4927.10,

[9] Consumer Groups September 1 Comments at 2, 3.

[10] *See* the OCTA filings on October 26, 2015; November 9, 2015; December 30, 2016; January 9, 2017; May 5, 2017; July 17, 2019; July 26, 2019; and September 1, 2021.

they should be rejected. Finally, the Commission should adopt a rule that comports with the language and intent of R.C. 4927.10 and conclude this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Reply Comments to Proposed Ohio Adm.Code 4901:1-6-21 electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telelcommunications Association