

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING  
OF  
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

Pursuant to Ohio Revised Code (“R.C.”) 4903.10, and Ohio Administrative Code (“Rule”) 4901-1-35, the Ohio Cable Telecommunications Association (“OCTA”) files this Application for Rehearing from the January 12, 2022 Third Supplemental Finding and Order issued by the Public Utilities Commission of Ohio (“Commission”) in this matter. The OCTA has been an active participant in this proceeding and files this Application for Rehearing because the Commission’s January 12, 2022 Third Supplemental Finding and Order is unjust, unreasonable, and unlawful with respect to the following:

1. It was unjust and unreasonable for the Commission to adopt Rule 4901:1-6-21 in violation of R.C. 121.95(F).
2. It was unjust and unreasonable for the Commission to fail to address how adopting Rule 4901:1-6-21 complies with R.C. 121.95(F).
3. It was unjust and unreasonable for the Commission to conclude that it has to extend the reach of its basic local exchange service (“BLES”) withdrawal rule and regulate voice services, including Voice over Internet Protocol services (“VoIP”).
4. It was unjust and unreasonable for the Commission to conclude that it has to address access to 9-1-1 service in this rule proceeding and has to “prospectively ensure that the incumbent local exchange carrier (“ILEC”) residential subscribers will continue to have access to 9-1-1 service subsequent to the ILEC abandoning the offering of BLES and even prior to the last voice service provider withdrawing or abandoning voice service.”
5. It was unjust and unreasonable for the Commission to conclude that abandonment or withdrawal of voice service by a sole provider of service

will result in the inability to access 9-1-1 and emergency services, and to transmit information related to medical devices.

6. It was unjust and unreasonable for the Commission to adopt Rules 4901:1-6-21(F) and (G) because they conflict with the Commission's re-affirmed intent to exempt VoIP and advanced service providers from the rules in Chapter 4901:1-6.
7. It was unjust and unreasonable for the Commission to conclude that the obligations in Rule 4901:1-6-21 as adopted are not unduly burdensome on voice service providers.
8. It was unjust and unreasonable for the Commission to fail to evaluate Rule 4901:1-6-21 against the Business Impact Analysis and to fail to transmit the draft rule to the Common Sense Initiative, both of which are required by R.C. 121.82.

The facts and arguments supporting this Application for Rehearing are set forth in the attached memorandum in support. The OCTA respectfully requests that the Commission grant rehearing and modify its January 12, 2022 Third Supplemental Finding and Order accordingly.

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608), Counsel of Record  
Anna Sanyal (0089269)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

614-464-5407

[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

[aasanyal@vorys.com](mailto:aasanyal@vorys.com)

*Counsel for the Ohio Cable Telecommunications  
Association*

**MEMORANDUM IN SUPPORT OF THE  
APPLICATION FOR REHEARING  
OF  
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

**I. Introduction**

In developing new administrative rules associated with the withdrawal or abandonment of basic local exchange service (“BLES”) by incumbent local exchange carriers (“ILECs”), the Commission has improperly included two provisions in adopted Rule 4901:1-6-21 – subsections (F) and (G) – that would impermissibly regulate voice services not currently regulated by the Commission, including voice over Internet Protocol (“VoIP”) services, and impermissibly regulate entities that are not public utilities. The Commission did not comply with Ohio’s regulatory restriction requirements in adopting the rule. Moreover, the Commission incorrectly concluded that it has authority to extend its authority over deregulated voice services, including VoIP services, based on its goal to address and ensure access to 9-1-1. The two provisions adopted in Rule 4901:1-6-21 are not necessary, not based on fact-based findings, will contradict other recently effective Commission rules, and will be unduly burdensome. Finally, the Commission improperly failed to evaluate the rule against a Business Impact Analysis or transmit the draft rule to the Common Sense Initiative, as required by R.C. 121.82.

**II. History**

In 2014, the Commission commenced a five-year rule review in order to re-examine its retail telecommunications rules in Chapter 4901:1-6. Before the Commission completed that review, Amended Substitute House Bill 64 (“H.B. 64”) became law amending certain portions of R.C. Chapter 4927. Thereafter, the Commission expanded the five-year review in this docket to include a rulemaking related to those new statutory provisions affected by H.B. 64, including the ILEC’s withdrawal or abandonment of BLES.

In this proceeding, there have been multiple rule proposals, rounds of comments, decisions and rehearing decisions. To date, no rule has been enacted to address the ILEC's withdrawal or abandonment of BLES, which is statutorily authorized by R.C. 4927.10. Most recently, in August 2021, the Commission issued for comment a draft Rule 4901:1-6-21 to address the withdrawal or abandonment of BLES. In its Third Supplemental Finding and Order, the Commission adopted Rule 4901:1-6-21 with some revisions, and included the following two provisions:

- (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) Pursuant to receiving such notice referenced in paragraph (F), 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.

### III. Argument

#### A. Assignment of Error #1: It was unjust and unreasonable for the Commission to adopt Rule 4901:1-6-21 in violation of R. C. 121.95(F).

R.C. 121.95(F) states:

Beginning on the effective date of this section and ending on June 30, 2023, **a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions.** The state agency may not satisfy this section by merging two or more existing regulatory restrictions into a single surviving regulatory restriction.

(Emphasis added.)

The Commission is subject to this requirement pursuant to R.C. 121.95(A). As explained in R.C. 121.95(B), rules that require or prohibit an action are considered to contain "regulatory

restrictions.” Rule 4901:1-6-21 is replete with language requiring an action or prohibiting an action, including the following:

<b>Adopted Rule 4901:1-6-21</b>	<b>Language Requiring or Prohibiting an Action</b>
Subsection A	<ul style="list-style-type: none"> <li>• “The collaborative ... will review the number....”</li> <li>• “This will be done for the purpose....”</li> </ul>
Subsection B (including subparagraphs)	<ul style="list-style-type: none"> <li>• “An ILEC cannot discontinue....”</li> <li>• “Receipt of this notice by the commission will trigger....”</li> <li>• “As part of this notice and investigation process an ILEC has to provide....”</li> <li>• “The notice has to include....”</li> <li>• “The notice needs to state the petition....”</li> <li>• “The notice has to be published....”</li> <li>• “An attachment to the notice will have to either....”</li> </ul>
Subsection C	<ul style="list-style-type: none"> <li>• “... [T]hat customer will be treated as....”</li> </ul>
Subsection D	<ul style="list-style-type: none"> <li>• “... [T]he ILEC’s notice to withdraw or abandon will be deemed....”</li> </ul>
Subsection E (including subparagraphs)	<ul style="list-style-type: none"> <li>• “... [T]he ILEC requesting the withdrawal or abandonment will have to provide....”</li> <li>• “This order will also address....”</li> <li>• “... [T]he ILEC requesting the withdrawal or abandonment will have to continue....”</li> </ul>
Subsection F	<ul style="list-style-type: none"> <li>• “... [I]t has to notify the Commission....”</li> </ul>

The substantive effect of Rule 4901:1-6-21 is to impose regulatory restrictions on various entities, including, unlawfully, on voice service providers. The Commission, however, made no attempt to remove two existing regulatory restrictions for each of the restrictions it adopted in Rule 4901:1-6-21, as dictated by R.C. 121.95(F). As a result, the Commission’s adoption of Rule 4901:1-6-21 was unjust and unreasonable and in violation of R.C. 121.95(F).

**B. Assignment of Error #2: It was unjust and unreasonable for the Commission to fail to address how adopting Rule 4901:1-6-21 complies with R.C. 121.95(F).**

In its initial comments to the Commission, OCTA identified how the then-proposed Rule 4901:1-6-21 attached to the August 25, 2021 Entry contained regulatory restrictions. OCTA Initial Comments at 12-13 (September 1, 2021). The OCTA also explained that R.C. 121.95(F) applied to the Commission and that the Commission had not proposed to remove existing regulatory

restrictions. *Id.* The Commission’s January 12, 2022 Third Supplemental Finding and Order at ¶¶ 26, 39 referenced the OCTA’s comments on these points, but did not address the OCTA’s contentions concerning the application of R.C. 121.95(F) in this proceeding. Instead, in the “Commission Conclusion” section, the Commission made three revisions to the text of the rule and adopted it; the Commission failed to address this regulatory restriction issue. The Commission’s failure to address the OCTA’s argument and demonstrate compliance with the law was unjust and unreasonable. Since the Commission, as a state agency, can only exercise that authority as specifically delegated to it by the General Assembly,<sup>1</sup> the Commission’s failure to address how Rule 4901:1-6-21 as adopted complies with R.C. 121.95(F) constitutes legal error.

**C. Assignment of Error #3: It was unjust and unreasonable for the Commission to conclude that it has to extend the reach of its BLES withdrawal rule and regulate voice services, including VoIP services.**

**Assignment of Error #4: It was unjust and unreasonable for the Commission to conclude that it has to address access to 9-1-1 service in this rule proceeding and has to “prospectively ensure that the ILEC’s residential subscribers will continue to have access to 9-1-1 service subsequent to the ILEC abandoning the offering of BLES and even prior to the last voice service provider withdrawing or abandoning voice service.”**

**Assignment of Error #5: It was unjust and unreasonable for the Commission to conclude that abandonment or withdrawal of voice service by a sole provider of service will result in the inability to access 9-1-1 and emergency services, and to transmit information related to medical devices.**

**Assignment of Error #6: It was unjust and unreasonable for the Commission to adopt Rules 4901:1-6-21(F) and (G) because they conflict with the Commission’s re-affirmed intent to exempt VoIP and advanced service providers from the rules in Chapter 4901:1-6.**

---

<sup>1</sup> 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.

Under the guise of detailing the statutory process by which ILECs may seek to withdraw or abandon BLES in a service area, the Commission impermissibly expanded the scope and reach of its regulatory authority through Rule 4901:1-6-21 to cover all voice service providers operating in Ohio, including deregulated VoIP service providers. The Commission recognized its action in ¶ 55 of the Third Supplemental Finding and Order, wherein it stated: “Consequently, such an analysis results in the Commission having to extend the reach of its rule to include other providers of voice service in order to ensure that these providers properly satisfy the statutory obligation.” The Commission extended its reach in Rules 4901:1-6-21(F) and (G), as those adopted provisions specifically require:

- Non-ILEC voice service providers, if a sole provider, to notify the Commission through a new “WVS” case filing before withdrawing or abandoning the voice service. (Rule 4901:1-6-21(F))
- That the WVS filing will be subject to Commission review and evaluation. (Rule 4901:1-6-21(G))
- That a voice service provider may become subject to the ILEC BLES withdrawal/abandonment process (potentially resulting in the Commission mandating that the provider continue to provide the voice service, including VoIP service) following the Commission investigation and issuance of specific determinations. (Rule 4901:1-6-21(G))

The Commission justified its expansive administrative reach on the basis that it has to address “the potential loss of 9-1-1 emergency services” that results from the withdrawal or abandonment by a sole voice service provider. Third Supplemental Finding and Order at ¶¶ 54-56. However, the Commission unlawfully concluded that it had the authority to address access to 9-1-1 service offered by otherwise non-regulated providers in this rule proceeding and it lacked sufficient evidence to support its conclusion that abandonment or withdrawal of voice service by a sole provider of service would result in the inability to access 9-1-1 and emergency services, or to transmit information related to medical devices.

The Commission's extended reach and justification in the Third Supplemental Finding and Order are unlawful and unreasonable for the following three reasons: (1) nothing in H.B. 64 authorized new Commission regulations over voice services and providers, including VoIP; (2) Commission reliance on R.C. 4927.03(A) is misplaced and lacks the requisite support of record-based facts; and (3) an extended reach contradicts the Commission's recent stated intent to exempt such providers and services from Commission regulation.

**1. H.B. 64 does not authorize the Commission to establish new regulations on voice services and providers, including VoIP.**

The Commission unlawfully extended the reach of its BLES withdrawal rule by imposing a regulation on providers and services that the Legislature chose not to regulate in H.B. 64. Contrary to the Commission's actions, nothing in H.B. 64 authorizes the Commission to impose new regulations on voice service providers, other than ILECs, or on voice services other than BLES. Instead, H.B. 64 established a process through which ILECs may withdraw their BLES services in certain circumstances. H.B. 64's only mention of other voice service providers is to address whether an *ILEC* should be permitted to withdraw BLES, by requiring the Commission to identify a reasonable and comparatively priced voice service or a willing provider of voice service.<sup>2</sup> It is significant that the Ohio General Assembly expressly distinguished BLES – and only BLES – among all the voice services that might be subject to the withdrawal rules in H.B. 64.<sup>3</sup> If the Ohio General Assembly had sought to direct the Commission to impose new regulations on other voice services and providers, including VoIP service, it would have included language to that effect. In this case, the fundamental maxim “*inclusio unus est exclusio alterius*” applies: to include one thing is to exclude the other. Here, that means that, when the Legislature directed the

---

<sup>2</sup> See R.C. 4927.10(B)(1) and (2).

<sup>3</sup> See R.C. 4927.01(A)(1) and (A)(18).



Commission to establish rules for BLES withdrawal but gave no direction as to withdrawal rules for other voice services or providers, that silence means that the Legislature did not intend for the Commission to establish withdrawal rules for non-BLES voice services and non-ILECs. Consequently, the Commission cannot improperly impose on such providers and services a regulatory burden when the Legislature saw fit to impose none.

Had the Legislature intended to regulate the withdrawal of non-BLES services, then H.B. 64 would have contained language to that effect. H.B. 64, however, contains no such language. Any interpretation of H.B. 64 that would justify imposing regulations on non-BLES voice services and providers conflicts with the Legislature's intent to regulate the withdrawal of **BLES**. H.B. 64 does not grant the Commission the authority to create and apply new regulations to non-BLES voice providers and voice services, including VoIP services, merely because an ILEC files a notice for BLES withdrawal/abandonment per H.B. 64. Consequently, by imposing such a regulation on providers and services that the Legislature chose not to regulate in H.B. 64, Rules 4901:1-06-21(F) and (G) impermissibly adds to, and thus conflicts, with H.B. 64.

**2. Reliance on R.C. 4927.03(A) is misplaced and is not supported by record-based facts.**

The Commission improperly relies on R.C. 4927.03(A) to expand its regulatory authority to include voice services and providers, including VoIP services. In the Third Supplemental Finding and Order, the Commission stated that it relied on R.C. 4927.03(A) to adopt a rule triggered by R.C. 4927.10 in H.B. 64:<sup>4</sup>

\* \* \* [A]s we have previously ruled, “\* \* \* in the context of developing rules for the implementation of R.C. 4927.10, the Commission cannot just consider R.C. 4927.10 or any other statute on a stand-alone basis, but must concurrently consider other equally important and applicable statutory

---

<sup>4</sup> Third Supplemental Finding and Order at ¶¶ 53-55, footnote omitted. (Emphasis added.)

concerns, such as the protection, welfare, and safety of the public addressed in R.C. 4927.03(A).” \* \* \*

\* \* \* [T]he Commission, in the context of developing its rules, must prospectively ensure that the ILEC’s residential subscribers will continue to have access to 9-1-1 service subsequent to the ILEC abandoning the offering of BLES, and even prior to the last voice service provider withdrawing or abandoning voice service.

**\* \* \* Consequently, such an analysis results in the Commission having to extend the reach of its rule to include other providers of voice service in order to ensure that these providers properly satisfy the statutory obligation.**

However, R.C. 4927.03 was established in 2012 to *deregulate* new communication services, including VoIP services. The operative words of R.C. 4927.03(A) make this clear: “\* \* \* the public utilities commission has no authority over any interconnected voice over internet protocol-enabled service or any telecommunications service that is not commercially available on September 13, 2010, and that employs technology that became available for commercial use only after September 13, 2010 \* \* \*.”<sup>5</sup> As such, the fundamental premise and overriding purpose of R.C. 4927.03 was to deregulate new communications services – and specifically VoIP services. The Commission has overlooked this primary purpose and made a serious error in relying on R.C. 4927.03(A) to justify and now impose new regulations on deregulated services.

The Commission’s “finding” in the Third Supplemental Finding and Order that served as the basis to adopt Rules 4901:1-6-21(F) and (G) was from a citation to Commission statements made more than five years ago – in November 2016:<sup>6</sup>

Specifically, the Commission highlights our responsibility, pursuant to R.C. 4927.03, to regulate any interconnected VoIP service or any telecommunications service that employs technology that became available for commercial use only after September 13, 2010, to ensure the protection,

---

<sup>5</sup> Pursuant to R.C. 4927.03(A), the Commission must make a prerequisite finding that “the exercise of the commission’s authority is necessary for the protection, welfare, and safety of the public,” before the Commission can adopt rules regulating VoIP and other services.

<sup>6</sup> Finding and Order at ¶¶ 205-206 (November 30, 2016).

welfare, and safety of the public. Absent this obligation, which may be placed upon either the ILEC or the remaining sole provider of voice service, the protection, welfare, and public safety of those identified as at risk residential subscribers who do not have access to voice services may be jeopardized. Specifically, the Commission highlights the need for access 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, the abandonment or withdrawal of such service will result in the inability of affected customers to access these services. Therefore, in order to ensure that all subscribers have access to emergency services, pursuant to its approval of adopted rule 4901:1-6-21(G), the sole provider of voice service, regardless of the technology utilized for its provisioning, may be subject to the all of the provisions of approved rule 4901:1-6-21 on a case-by-case basis.

The Commission's statements are not based on any actual facts or any actual or reasonably possible scenario that would constitute a "finding" under R.C. 4927.03(A). The Commission does not cite to any evidence where residential subscribers have been left without access to 9-1-1 service as result of an ILEC's BLES withdrawal or abandonment that would justify the Commission's extraordinary reach into regulating voice service providers such as VoIP providers. In fact, the Commission itself stated that it adopted provisions (F) and (G) in Rule 4901:1-6-21, not in response to any known grievance or injury, but to "prospectively ensure that the ILEC's residential subscribers will continue to have access to 9-1-1 service." Third Supplemental Finding and Order at ¶ 54.

The logic for the Commission's conclusion appears to be that the Commission allows an ILEC to withdraw BLES, and then all but one competitive local exchange carrier, VoIP provider, wireless provider, or other voice service provider in an area stops providing service.<sup>7</sup> Assuming that is the case, no evidence exists that voice providers are shrinking or reducing – if anything, the

---

<sup>7</sup> The Commission's rule and its decision does not state that an ILEC has to have withdrawn BLES before provisions (F) and (G) could be triggered. Because BLES and voice service are defined differently under Ohio law, a "sole provider" of voice service may not necessarily only exist after the ILEC's BLES is withdrawn.

providers and technologies providing voice service are increasing. Even in the unlikely event that voice service was disappearing, the rule is speculative and unjustly fails to protect consumer access to 9-1-1 service. Under the adopted rule, only the last provider to withdraw voice service is subject to Rules 4901:1-6-21(F) and (G). The tenth-to-last, sixth-to-last, and next-to-last voice service providers to withdraw service would not be the “sole” voice service providers, and thus would avoid the filing requirements of either Rule. Rules 4901:1-6-21(F) and (G) thus create a hypothetical “race to the Commission” for providers to withdraw service, at some point actually creating a perverse incentive for non-BLES voice service providers to withdraw service in this speculative situation – thus actually endangering, not protecting, access to 9-1-1 service.<sup>8</sup>

The Commission’s orders identify no evidence indicating that Rules (F) and (G) would actually protect consumer access to 9-1-1 service. Indeed, if it was reasonably likely that all the non-BLES providers would withdraw voice service after an ILEC withdrew BLES, then the rules allowing BLES withdrawal would threaten consumer access to 9-1-1 service and should not be permitted. Moreover, these situations are all speculative. The loss of all but one non-BLES voice service provider is a hypothetical situation and as such is not a record-based “finding.” In addition, the Commission cited to nothing recent – no change in law, no BLES withdrawal proceedings, no area in Ohio at risk for a lack of 9-1-1 even if BLES withdrawal was permitted, and no facts that support a finding in January 2022 that Commission Rules 4901:1-6-21(F) and (G) are actually necessary. If anything, the lack of any circumstances during the more than five years of this

---

<sup>8</sup> Requiring all voice service providers who seek to withdraw service to seek permission from the Commission, and not just the “sole” remaining provider, exacerbates the conflict with H.B. 64, and does not cure the fundamental problem with these rules: that they extend regulation to services and providers that the Legislature has not authorized, and in fact has expressly deregulated.

proceeding demonstrates the opposite – that Commission action now via adoption of Rules 4901:1-6-21(F) and (G) was not and is still not “necessary.”<sup>9</sup>

Moreover, extensive activities at the federal and state level, pursuant to which providers are deploying new broadband infrastructure across Ohio to reach residential customers with Tier 2 broadband service,<sup>10</sup> are expected to increase access to telecommunications and information services of various kinds. This contradicts the Commission’s conclusions regarding the risk of loss of access to 9-1-1 emergency services as well.

In addition, provisions (F) and (G) could apply to any provider of voice service that is the “sole provider” of voice service and could apply even if the customer was never an ILEC BLES customer. These facts further establish that no factual basis exists for the Commission’s conclusion that a voice service withdrawal will result in the inability to access 9-1-1 and emergency services, and to transmit information related to medical devices.

As a result, the decision contains only a conclusory claim – not an actual, fact-based finding of necessity for the Commission adoption of Rules 4901:1-6-21(F) and (G).

**3. Rules 4901:1-6-21(F) and (G) are inconsistent with the Commission’s re-affirmed intent to exempt VoIP and advanced service providers from the rules in Chapter 4901:1-6.**

Provisions (F) and (G) in Rule 4901:1-6-21 are inconsistent with the Commission’s other rules in Chapter 4901:1-6. The Commission recently final-filed Rule 4901:1-6-02 and that rule took effect on December 27, 2021, making clear that VoIP and wireless providers – by far the most

---

<sup>9</sup> By way of reminder, the Commission did not complete the process for Rules 4901:1-6-21(F) and (G) following the above-quoted statements it made in 2016. The Commission withdrew the November 2016-adopted Rule 4901:1-6-21 from the Joint Committee on Agency Rule Review and did not re-file it. Then, when the Commission next proposed for comment another draft of Rule 4901:1-6-21 in July 2019, provisions (F) and (G) were proposed to be removed from the rule. The Commission, however, did not issue a decision. As a result, no BLES withdrawal rule was enacted.

<sup>10</sup> R.C. 122.40(K) defines Tier 2 broadband service as “a retail wireline or wireless broadband service capable of delivering internet access at speed of at least twenty-five megabits per second downstream and at least three megabits per second upstream.”

common non-BLES voice services – “are exempt from all rules in Chapter 4901:1-6” except for a narrowly and specifically identified list of exceptions. Specifically, Rule 4901:1-6-02 contains the following provisions:

- (B) A wireless service provider and a reseller of wireless service are exempt from all rules in Chapter 4901:1-6 of the Administrative Code, except rules 4901:1-6-24 (wireless service provisions), 4901:1-6-09, eligible telecommunications carrier (ETC), 4901:1-6-19, lifeline requirements for ETCs (where the wireless service provider or reseller of wireless service has attained ETC status), and 4901:1-6-36, telecommunications relay service.
- (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).
- (D) A provider of any telecommunications service that 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), in the event such provider is subsequently required under federal law to provide to its customers access to telecommunications relay service.

It is, therefore, inconsistent to adopt provisions (F) and (G) in Rule 4901:1-6-21 only a few weeks later. Indeed, by the express terms of the new Rule 4901:1-6-02(C), the proposed revisions to Rules 4901:1-6-21(F) and (G) would not apply to VoIP service, and under Rule 4901:1-6-02(B), Rules 4901:1-6-21(F) and (G) would not apply to wireless service. The rules adopted in January 2022 in this proceeding would not add to the limited exceptions to the “exempt from all rules in Chapter 4901:1-6” language in those just-adopted rules. Thus, by the Commission’s recent finalization of Rule 4901:1-6-02 and the omission of any proposed change to that rule in January 2022, the Commission’s own decisions and actions make it evident that there is no necessity for the Commission to extend its reach and regulate voice services. It therefore was unjust and unreasonable for the Commission to adopt Rules 4901:1-6-21(F) and (G).

**D. Assignment of Error #7: It was unjust and unreasonable for the Commission to conclude that the obligations in Rule 4901:1-6-21 as adopted are not unduly burdensome on voice service providers.**

The extent of the Commission's discussion of the burdens imposed by Rules 4901:1-6-21(F) and (G) is set forth at ¶ 55 in its Third Supplemental Finding and Order:

With respect to the attending obligations resulting from adopted Rules 4901:1-6-21(F) and (G), the Commission has properly balanced the interests of voice service providers with the need to ensure the public safety and welfare. In doing so, the Commission determines that the resulting rules and notice filing obligations are not unduly burdensome on voice service providers, especially when considering that such filings will assist in the protection, welfare, and safety of the public.

The Commission concluded that regulation of VoIP and other service providers via the BLES withdrawal rule is not unduly burdensome. It reached that conclusion even though the rule allows the Commission to mandate continued provision of voice services to designated customers by one provider – the last non-BLES provider to seek to withdraw service to an area – as a carrier of last resort. Commenters argued that provisions (F) and (G) would be burdensome.<sup>11</sup> In addition to the obvious burden of being singled out and given an unfunded mandate to provide voice service, these provisions will be unduly burdensome because they:

- Discourage companies from being a voluntary “willing provider of a reasonable and comparatively priced voice service” for purposes of the ILEC’s BLES withdrawal.
- Create a significant barrier to investment as companies will reconsider investing in new facilities (including those capable of providing broadband service) if they believe that, in the end, their networks and services will be subject to common carrier or carrier of last resort regulation.
- Create a potential conflict between state and federal law and risk preemption either by the Federal Communications Commission (“FCC”), Congress, and/or the courts. The FCC has not classified interconnected VoIP services as subject to common carrier regulation under Title II of the

---

<sup>11</sup> See OCTA Initial Comments at 13-14 (September 1, 2021).

Communications Act,<sup>12</sup> and has repeatedly declined to do so. Federal law permits such requirements to be imposed only upon telecommunications service providers regulated under Title II. These provisions, however, would mandate quintessential common carrier requirements on non-Title II providers.

The Commission ignored these significant burdens and its conclusion is not just or reasonable.

**E. Assignment of Error #8: It was unjust and unreasonable for the Commission to fail to evaluate Rule 4901:1-6-21 against the Business Impact Analysis and to fail transmit the draft rule to the Common Sense Initiative, both of which are required by R.C. 121.82.**

The Commission's August 2021 Entry requesting comments on Rule 4901:1-6-21 did not include an evaluation of the proposed rule against the Business Impact Analysis ("BIA"). The Commission adopted the rule (with some revisions) in its Third Supplemental Finding and Order, also without having completed such evaluation. R.C. 121.82, however, requires that the evaluation be done:

In the course of developing a draft rule that is intended to be proposed under division (D) of section 111.15 or division (C) of section 119.03 of the Revised Code, **an agency shall:**

**(A) Evaluate the draft rule against the business impact analysis instrument.** If, based on that evaluation, the draft rule will not have an adverse impact on businesses, the agency may proceed with the rule-filing process. If the evaluation determines that the draft rule will have an adverse impact on businesses, the agency shall incorporate features into the draft rule that will eliminate or adequately reduce any adverse impact the draft rule might have on businesses;

**(B) Prepare a business impact analysis** that describes its evaluation of the draft rule against the business impact analysis instrument, that identifies any features that were incorporated into the draft rule as a result of the evaluation, and that explains how those features, if there were any, eliminate or adequately reduce any adverse impact the draft rule might have on businesses;

---

<sup>12</sup> See, e.g., 47 U.S.C. §153(51); *Verizon v. FCC*, 740 F.3d 623, 650 (2014).



(C) **Transmit** a copy of the full text of the draft rule and the business impact analysis electronically **to the common sense initiative office**, which information shall be made available to the public on the office’s web site in accordance with section 107.62 of the Revised Code;

\* \* \*

(Emphasis added.) As discussed earlier, Rule 4901:1-6-21 will have an adverse impact on business because of provisions (F) and (G).

In addition, the above statute requires the draft rule and BIA to be provided to the Common Sense Initiative (“CSI”). Again, the Commission’s Entry in August 2021 requesting comments on Rule 4901:1-6-21 did not include a directive that draft Rule 4901:1-6-21 be sent to the CSI, nor did the Commission’s Third Supplemental Finding and Order reflect that it occurred.<sup>13</sup> The CSI’s list of active rules from the Commission also does not reflect that Rule 4901:1-6-21 was submitted.<sup>14</sup>

Public Utilities Commission	Motion for Protective Orders	1	2/28/2018	3/16/2018	Closed
Public Utilities Commission	Electric Companies - Case No. 17-1842-EL-ORD	33	7/18/2019	8/30/2019	Closed
Public Utilities Commission	Green Pricing Standards 20-1195 EL-ORD	3	2/24/2021	4/7/2021	Closed
Public Utilities Commission	Metering Options	6	3/10/2021	3/27/2021	Closed
Public Utilities Commission	Recovery of Infrastructure Development Costs	4	3/10/2021	5/3/2021	Closed
Public Utilities Commission	Interconnection Rules	13	6/2/2020	6/9/2020	Closed
Public Utilities Commission	Open Commission Meetings	2	6/2/2020	6/9/2020	Closed
Public Utilities Commission	Administrative Provisions and Procedures	38	6/2/2020	6/9/2020	Closed
Public Utilities Commission	Utility Tariffs: Underground Utility Protection Service Registration	2	6/2/2020	6/9/2020	Closed
Public Utilities Commission	Complaint Proceedings	2	6/2/2020	6/9/2020	Closed
Public Utilities Commission	Ohio Coal Research and Development Rate	9	3/24/2021	5/7/2021	Closed

The record does not reflect that the Commission complied with the statutory requirements set forth in R.C. 121.82 for evaluation of the 2021 draft Rule 4901:1-6-21. These errors were unjust and unreasonable.

<sup>13</sup> In 2015, a BIA was prepared for the package of draft rules under consideration at that time, and the directive to submit to the CSI was recognized by the Commission. See Entry at ¶ 4 and at Attachment B (September 23, 2015). A BIA prepared six years earlier cannot and should not be acceptable for the single draft rule issued for comment in 2021, in satisfaction of R.C. 121.82.

<sup>14</sup> See “CSI Active Rule List” on the Common Sense Initiative’s website at <https://governor.ohio.gov/priorities/common-sense-initiative/active-rule-packages> (accessed February 4, 2022).

#### **IV. Conclusion**

Rule 4901:1-6-21 does not comport with the regulatory restriction requirements of R.C. 121.95, which are applicable to the Commission. Also, the Commission's decision to impose new regulations that "extend its reach" through Rules 4901:1-6-21(F) and (G) to voice services and providers, including VoIP services, was in error and the Commission's related bases in the Third Supplemental Finding and Order are unjust and unreasonable. It is undisputed that Rules 4901:1-6-21(F) and (G) could apply to providers who are neither telephone companies nor public utilities under Ohio law. Those provisions impose service withdrawal regulations on non-BLES voice service when H.B. 64 (specifically R.C. 4927.10) only directed the Commission to establish BLES withdrawal rules for ILECs and did not authorize a withdrawal/abandonment process for non-BLES voice service and non-ILEC providers. The Commission also failed to establish a fact-based finding that extending the rules to non-BLES voice services is actually necessary or protective of access to 9-1-1 service, and therefore, the Commission's reliance on R.C. 4927.03(A) to justify provisions (F) and (G) of Rule 4901:16-21 was improper, unjust and unreasonable and should be reconsidered. The adopted Rules 4901:1-6-21(F) and (G) also conflict with the Commission's wide-ranging conclusions to continue to exempt VoIP and wireless voice service providers from nearly all Commission regulation. It is also noteworthy that provisions (F) and (G) could apply to any provider of voice service that is the "sole provider" of voice service even if the customer was never an ILEC BLES customer. For these multiple reasons, the Commission's extension of the BLES withdrawal to voice services and provides is wrong.

Lastly, the Commission failed to comply with the rulemaking requirements of R.C. 121.82. Based on all of the reasons above, the Commission should reverse its January 12, 2022 decision and remove provisions (F) and (G) from Rule 4901:1-6-21.

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608), Counsel of Record

Anna Sanyal (89269)

Vorys, Sater, Seymour and Pease LLP

52 E. Gay Street

P.O. Box 1008

Columbus, OH 43216-1008

614-464-5407

[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

[aasanyal@vorys.com](mailto:aasanyal@vorys.com)

*Attorneys for the Ohio Cable Telecommunications  
Association*

## **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served via electronic mail on February 11, 2022, to the following:

[ejacobs@ablelaw.org](mailto:ejacobs@ablelaw.org)  
[ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)  
[jamie.williams@occ.ohio.gov](mailto:jamie.williams@occ.ohio.gov)  
[tracy.greene@occ.ohio.gov](mailto:tracy.greene@occ.ohio.gov)  
[debra.bingham@occ.ohio.gov](mailto:debra.bingham@occ.ohio.gov)  
[patricia.mallarnee@occ.ohio.gov](mailto:patricia.mallarnee@occ.ohio.gov)  
[Michele.noble@squirepb.com](mailto:Michele.noble@squirepb.com)  
[plee@oslsa.org](mailto:plee@oslsa.org)  
[dt1329@att.com](mailto:dt1329@att.com)  
[mo2753@att.com](mailto:mo2753@att.com)  
[jk2961@att.com](mailto:jk2961@att.com)  
[cblend@aep.com](mailto:cblend@aep.com)  
[barth.royer@aol.com](mailto:barth.royer@aol.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  
[aasanyal@vorys.com](mailto:aasanyal@vorys.com)

[nmorgan@lascinti.org](mailto:nmorgan@lascinti.org)  
[msmalz@ohiopoveritylaw.org](mailto:msmalz@ohiopoveritylaw.org)  
[sjagers@ohiopoveritylaw.org](mailto:sjagers@ohiopoveritylaw.org)  
[mwalters@proseniors.org](mailto:mwalters@proseniors.org)  
[william.haas@t-mobile.com](mailto:william.haas@t-mobile.com)  
[john.jones@ohioattorneygeneral.gov](mailto:john.jones@ohioattorneygeneral.gov)  
[mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  
[glenn.richards@pillsburylaw.com](mailto:glenn.richards@pillsburylaw.com)  
[joseph.cohen@pillsburylaw.com](mailto:joseph.cohen@pillsburylaw.com)  
[amreese@lasclev.org](mailto:amreese@lasclev.org)  
[david.vehslage@verizon.com](mailto:david.vehslage@verizon.com)  
[Kathy.L.Buckley@verizon.com](mailto:Kathy.L.Buckley@verizon.com)  
[Deborah.kuhn@verizon.com](mailto:Deborah.kuhn@verizon.com)  
[dhart@douglasshart.com](mailto:dhart@douglasshart.com)  
[patrick.crotty@cinbell.com](mailto:patrick.crotty@cinbell.com)  
[matthew.myers@upnfiber.com](mailto:matthew.myers@upnfiber.com)

\_\_\_\_\_  
/s/ Gretchen L. Petrucci

Gretchen L. Petrucci

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**2/11/2022 4:58:52 PM**

**in**

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

Summary: Application for Rehearing electronically filed by Mrs. Gretchen L.  
Petrucchi on behalf of Ohio Cable Telecommunications Association