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Center (“OPLC”), the Office of the Ohio Consumers’ Counsel (“OCC”), and Legal Aid Society of Southwest Ohio, LLC (“LASSO”).⁴

On December 1, 2023, the Ohio Telecom Association (“OTA”) submitted proposed rule amendments⁵ that may harm consumers for whom basic local exchange service is the only feasible voice service option. For consumer protections, the Consumer Parties recommend that the PUCO reject OTA’s attempts to erode the PUCO’s consumer protection rules.

II. RECOMMENDATIONS FOR CONSUMER PROTECTION

A. **The PUCO’s rules in O.A.C. 4901:1-6 are useful and beneficial for consumer protection. OTA’s claims to the contrary should be rejected.**

OTA’s proposed rule amendments would erode rules that protect consumers who receive basic local exchange service (“BLES”)⁶ (e.g., O.A.C. 4901:1-6-14(J) and (K), 21(B)). OTA asserts, however, that certain language in the rules are not “useful or

⁴ Office of the Ohio Consumers’ Counsel is the statutory representative of Ohio’s approximately 4.5 million residential utility consumers; Ohio Poverty Law Center works to reduce poverty and increase justice by protecting and expanding the legal rights of Ohioans living, working, and raising their families in poverty; Legal Aid Society of Southwest Ohio serves residents in Southwest Ohio in resolving serious civil legal problems of low-income people, to promote economic and family stability and to reduce poverty through effective legal assistance.

⁵ Case No. 23-817-TP-ORD, Comments of the Ohio Telecom Association (December 1, 2023) (“OTA Comments.”)

⁶ The term “basic local exchange service” is defined in R.C. 4927.01 as “residential end-user access to and usage of telephone company-provided services over a single line or small-business end-user access to and usage of telephone company-provided services over the primary access line of service, which in the case of residential and small-business access and usage is not part of a bundle or package of services, that does both of the following: (a) Enables a customer to originate or receive voice communications within a local service area...; (b) Consists of all of the following services: (i) Local dial tone service; (ii) For residential end users, flat-rate telephone exchange service; (iii) Touch tone dialing service; (iv) Access to and usage of 9-1-1 services, where such services are available; (v) Access to operator services and directory assistance; (vi) Provision of a telephone directory...for no additional charge and a listing in that directory...; (vii) Per call, caller identification blocking services; (viii) Access to telecommunications relay service; and (ix) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.”

beneficial” per R.C. 106.03(A)(4).⁷ The hundreds of thousands of Ohioans who rely on reliable and reasonably priced BLES would likely disagree.

OCC and other consumer advocates explained in Case No. 19-173-TP-ORD the importance of BLES to Ohio consumers as follows:

(1) a significant number of Ohioans (360,709 total customers and 234,179 residential consumers) continue to rely on BLES services provided by Ohio ILECs; (2) aggregate line loss data includes both BLES and non-BLES lines and BLES line losses comprise less than half of the aggregate line losses (with residential BLES representing just 28% of reported line losses); (3) price increases are impacting residential consumers to a greater degree (in terms of prevalence and magnitude) than business customers, and (4) price decreases for BLES are virtually non-existent.⁸

Even with changes in technology, Ohioans still rely on BLES for a number of reasons (*e.g.*, cost, geographical location, reliability concerns, etc.), and many of rely on BLES as the *only* feasible voice service option. At-risk Ohioans such as senior citizens, low-income citizens, and rural residents may also be more dependent on BLES for their communications needs, and as such, would be disproportionately affected by changes made to BLES.⁹ Thus, contrary to OTA’s claims¹⁰ the PUCO’s rules designed to protect the availability, adequacy, reliability, and affordability of BLES are “useful and beneficial” and should be retained.

⁷ OTA Comments at 7.

⁸ *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, Consumer Protection Comments Regarding HB402 and PUCO Staff Report by Legal Aid Society of Southwest Ohio, LLC, Office of the Ohio Consumers’ Counsel, Ohio Poverty Law Center, Pro Seniors, Inc. (March 15, 2022) at 7 (“Consumer Groups’ Comments.”)

⁹ Consumer Groups’ Comments at 15-19.

¹⁰ OTA Comments at 7-9.

The importance of BLES is made clear in the state's telecommunications policy.

The first policy listed in R.C. 4927.02(A)(1) is to:

Ensure the adequacy and reliability of basic local exchange service consistent with sections 4927.07, 4927.10, and 4927.11 of the Revised Code, and the adequacy and reliability of voice service throughout the state.

To emphasize BLES' importance, regulations have been developed to specifically protect BLES to address important consumer-impacting issues such as pricing flexibility, quality of service, and service withdrawal.

B. The PUCO should reject OTA's proposals to eliminate the "standard of reasonableness" regarding late payment charges, and installation and reconnect fees for BLES (O.A.C. 4901:1-6-14(J) and 14(K)).

OTA claims that certain language in O.A.C. 4901:1-6-14(J) and 14(K) pertaining to BLES late payment charges and BLES installation/reconnection fees exceeds the PUCO's authority and should be deleted.¹¹ OTA is wrong.

O.A.C. 4901:1-6-14(J) addresses BLES late payment charges and O.A.C. 4901:1-6-14(K) addresses BLES installation and reconnection fees. These BLES-related charges must be tariffed.¹² O.A.C. 4901:1-6-14(J) and 14(K) state that BLES late payment, BLES installation and BLES reconnection fees may be increased "through a thirty-day application for tariff amendment (ATA) filing."¹³

¹¹ OTA Comments at 2-4.

¹² O.A.C. 4901:1-6-11(A) ("Services required to be tariffed...Basic local exchange service (BLES), including BLES installation and reconnection fees and lifeline service rates or discounts."); O.A.C. 4901:1-6-11(B) ("All tariffs shall include, at a minimum, the following elements... A complete list of rates, relative to the provision of each service."); O.A.C. 4901:1-6-14(B)(1) ("The tariff for BLES shall contain all rates, terms, and conditions for BLES and installation and reconnection fees for BLES.")

¹³ O.A.C. 4901:1-6-14(K); *see also* O.A.C. 4901:1-6-14(J) ("Late payment charges for BLES may be introduced or increased through a thirty-day ATA filing.")

OTA does not object to tariffing these BLES-related charges, but instead proposes to eliminate language in the rules that require such charges to be within a “standard of reasonableness.”¹⁴ Striking that language would harm consumers because telephone companies could unreasonably increase these charges.

OTA claims that the PUCO has no rate review authority over late payment charges, installation fees, reconnection fees, and construction fees.”¹⁵ According to OTA, the PUCO has no authority under R.C. 4927.12 (regarding rates for BLES) or R.C. 4927.125 to impose the “standard of reasonableness” in the rules. That is incorrect.

R.C. 4927.12 limits how much an incumbent local exchange carrier can raise its rates for BLES. Plainly, capping the rates for BLES, yet allowing the utility to charge *unreasonable* amounts for construction fees, late payment charges, and installation fees would be an absurd result contrary to the purpose of R.C. 4927.12. And it would be inconsistent with the state’s policy to ensure the availability, adequacy, and reliability of BLES.¹⁶ It would also be prohibited by R.C. 4927.11(A) which requires ILECs to provide BLES to all persons and entities in their service areas “on a *reasonable* and nondiscriminatory basis.”¹⁷

Moreover, R.C. 4927.125 states that “[t]he rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service shall be tariffed *in the manner prescribed by rule adopted by the public utilities commission.*” (Emphasis added.) The PUCO has adopted rules regarding the pricing

¹⁴ OTA Comments at 4 (proposing to strike “standard of reasonableness” language in O.A.C. 4901:1-6-14(J) and (K)).

¹⁵ OTA Comments at 3.

¹⁶ See R.C. 4927.02(A)(1) and 4927.08(A).

¹⁷ Emphasis added.

parameters for BLES, including for late payment charges, and installation and reconnection fees, which include the “standard of reasonableness.”¹⁸

OTA’s claim that the PUCO lacks authority over the level of these BLES-related fees has also been previously considered and rejected by the PUCO. In Case No. 10-1010-TP-ORD, the PUCO considered a proposal to cap BLES installation, reconnection and late payment fees. Incumbent local exchange carriers (“ILECs”) AT&T and Cincinnati Bell Telephone (“CBT”) as well as the OTA opposed such pricing limitations. The ILECs and OTA claimed in that case – similar to OTA’s position in the instant proceeding – that, “[n]owhere in the law...does the Commission have the express authority to do anything other than prescribe how these items appear in tariffs; no authority is granted over the level of any fees.”¹⁹ As an alternative to the rate cap proposal, CBT proposed the “standard of reasonableness.”²⁰

In deciding the issue, the PUCO rejected the notion that providers should be permitted to increase these BLES-related fees to any level they see fit (as OTA proposes here). The PUCO said:

Given the lengths that the law goes to in protecting BLES rates, it would make no sense, in our view, to have no pricing parameters around BLES fees which could easily put BLES out of reach for some customers. Moreover, we do not find compelling AT&T's argument as to the unfairness of applying this restriction only on the ILECs, since the law only places the requirement to provide BLES on the ILECs.²¹

¹⁸ O.A.C.

¹⁹ SB 162 Adoption Order at p. 21.

²⁰ SB 162 Adoption Order at p. 20.

²¹ SB 162 Adoption Order at 21.

The PUCO's reasoning still holds true today; there have been no intervening changes to statutes or the telecommunications marketplace that supports elimination of BLES protections as proposed by OTA.

OTA's claim that R.C. 4927.03(D) removes PUCO authority over charges for BLES late payment, BLES installation and BLES reconnect fees is incorrect. For example, one exception referenced in R.C. 4927.03(D) is 4927.125, which states that the rates, terms and conditions for BLES shall be tariffed in a manner prescribed by the PUCO.²² Thus, as noted above, the PUCO has the express authority to require BLES-related charges to be tariffed at a "reasonable" level.

Accordingly, the PUCO should reject OTA's proposed amendments to O.A.C. 4901:1-6-14(J) and O.A.C. 4901:1-6-14(K); these rules should remain intact.

C. There is no basis for OTA's proposal to strike language from O.A.C. 4901:1-6-21(B).

OTA claims that O.A.C. 4901:1-6-21(B) is inconsistent with R.C. 4927.10, and proposes to strike the following language as follows: "~~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.~~"²³ OTA proposes to replace that language with the following: "An ILEC seeking to withdraw BLES shall file notice of the relevant action of the FCC on the most up-to-date telecommunications filing form for the

²² R.C. 4927.125 ("The rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service shall be tariffed in the manner prescribed by rule adopted by the public utilities commission.")

²³ *Id.*

withdrawal of the service.”²⁴ There is no basis for OTA’s proposal and it should be rejected.

The problem with OTA’s proposal is that the language it seeks to delete is true and accurate. Under R.C. 4927.10, when the Federal Communications Commission (“FCC”) issues 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” the prohibition in R.C. 4929.07 against withdrawal or abandonment of BLES does not apply as long as the incumbent local exchange carrier provides at least 120 days’ notice to the PUCO and the affected consumers.²⁵ OTA claims that the language it wants stricken “suggests” that an application for relief is necessary, but the language quoted above from O.A.C. 4901:1-6-21(B) that OTA wants to strike does not say “application.” The language is clear, correct, and consistent with R.C. 4927.10(A)(1). The language should not be changed.

For these reasons, the PUCO should reject OTA’s proposed amendments to the portion of O.A.C. 4901:1-6-21(B) set forth above; these rules should remain intact.

D. The PUCO should reject OTA’s proposal to strike “Excess construction charges” from O.A.C. 4901:1-6-11 and 4901:1-6-33 .

OTA claims that certain language in O.A.C. 4901:1-6-11 and 4901:1-6-33 related to excess construction charges exceeds the PUCO’s authority and should be amended.²⁶ OTA’s premise is that identifying “excess construction charges” as a service required to be in PUCO approved tariffs exceeds the PUCO’s authority over telecommunications

²⁴ *Id.*

²⁵ R.C. 4927.10(A)(1).

²⁶ OTA Comments at 2-4.

services and conflicts with R.C. 4927.03(D).²⁷ The Consumer Parties disagree with OTA's premise and proposed rule amendments.

OTA attempts to recycle arguments that have been previously considered and rejected by the PUCO. In Case No. 10-1010-TP-ORD, OTA argued that excess construction charges should be deleted from the list of services required to be tariffed under O.A.C. 4901:1-6-11, and that O.A.C. 4901:1-6-33 addressing excess construction charges goes beyond the PUCO's authority.²⁸ The PUCO rejected both OTA arguments. With regard to O.A.C. 4901:1-6-11, the PUCO said: "We find, however, that it is appropriate to require excess construction charges to be tariffed, as more fully described under rule [4901:1-6-]33."²⁹ Regarding O.A.C. 4901:1-6-33, the PUCO said:

After carefully considering the comments, the Commission agrees with OPTC that it is necessary to retain this rule to ensure that BLES continues to be available at reasonable rates, consistent with the purpose of the new law. We find it appropriate, however, to adopt the suggestion of CBT to allow excess construction charges to be addressed in Commission-approved tariffs, just as they are today. The rule has been modified accordingly.³⁰

Nothing has changed in terms of statutes or the telecommunications marketplace that would support a reversal in the PUCO's previous findings. In fact, the language of R.C. 4927.03(D) to which OTA cites as support for its position and proposed rule amendments

²⁷ R.C. 4927.03(D) ("Except as specifically authorized in sections 4927.01 to 4927.21 of the Revised Code, the commission has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company.")

²⁸ SB 162 Adoption Order at 15, 38.

²⁹ SB 162 Adoption Order at 15.

³⁰ SB 162 Adoption Order at 38.

existed when the PUCO rendered its previous findings rejecting OTA's positions on excess construction charges.³¹

Moreover, the PUCO's rationale for previously rejecting OTA's positions – *i.e.*, it is necessary to retain the rules to ensure that BLES continues to be available at reasonable rates – is the most important point. BLES must be tariffed, that tariff must include all terms and conditions associated with provision of BLES, and that tariff must include a complete list of rates relative to the provision of BLES.³² OTA's proposal to remove excess construction charges from tariffs – and more specifically to remove excess construction charges from *BLES* tariffs³³ – is inconsistent with BLES tariffing requirements and raises concerns about whether BLES would continue to be available at reasonable prices.

Accordingly, the PUCO should reject OTA's proposed amendments to O.A.C. 4901:1-6-11 and 4901:1-6-33; these rules should remain intact.

III. CONCLUSION

For the reasons explained above, there is no justification for making substantive changes to O.A.C. 4901:1-6 at this time. The rules – particularly those related to BLES – continue to be useful and beneficial, they are consistent with the state's

³¹ The PUCO's Order in Case No. 10-1010-TP-ORD (October 27, 2010) explains that the governor of Ohio signed into law Substitute Senate Bill 162 (effective September 13, 2010), which repealed and replaced the operative provisions of R.C. 4927. One of the changes made by SB 162 was to add R.C. 4927.03(D) – *i.e.*, the same language to which OTA cites as support for its proposals for excess construction charges. Since R.C. 4927.03(D) became effective before the PUCO's Order in 10-1010-TP-ORD, the PUCO rendered its decision on excess construction charges with full information about the authority granted it by R.C. 4927.03(D).

³² O.A.C. 4901:1-6-11(B) and 4901:1-6-14(B)(2).

³³ OTA proposes to delete the following language from O.A.C. 4901:1-6-33: "An ILEC may not charge an applicant for any excess construction charges for BLES unless provisions for such charges are set forth in the company's tariff and approved by the commission."

telecommunications policy, and there are no conflicts with federal or Ohio laws or rules. OTA's proposed rule amendments – which erode protections for the hundreds of thousands of Ohioans that rely on BLES – should *not* be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Reply Comments for Consumer Protection was served on the persons stated below via electronic transmission, this 18th day of December 2023.

/s/ Donald J. Kral
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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