

Amended Business Impact Analysis
Chapter 4901:1-6 (Retail Telecommunication Services)

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CSI - Ohio

The Common Sense Initiative

Amended Business Impact Analysis

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Regulation/Package Title: Ohio Adm.Code Chapter 4901:1-6 Telephone Company
Procedures and Standards

Rule Number(s): 4901:1-6-01 through 4901:1-6-37

Date: August 9, 2017 - Revised

Rule Type:

| | | |
|---|---|---|
| <input checked="" type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review | <input checked="" type="checkbox"/> No Change |
| <input checked="" type="checkbox"/> Amended | <input checked="" type="checkbox"/> Rescinded | |

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

On September 5, 2014, the Commission opened docket *In re Review of Chapter 4901:1-6 of the Ohio Adm.Code Case No. 14-1554-TP-ORD*, in which a five-year review of its retail telecommunications rules, including the withdrawal and abandonment of telecommunications services, is being considered. A workshop was held, a Business Impact Analysis was submitted, and comments were received relative to the review of Ohio Adm.Code 4901:1-6.

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Subsequent to the holding of the workshop and the receipt of comments, the 131st Ohio General Assembly adopted Am. Sub. House Bill 64 (H.B. 64) that, among other things, directed the Commission to adopt rules to implement R.C. 4927.10 and 4927.101, as well as the amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11. A workshop relative to these issues was held on August 26, 2015. Pursuant to the Entry of September 16, 2015, comments were sought regarding Commission Staff proposed rules implementing R.C. 4927.10 and 4927.101, as well as amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11.

The Commission issued its Finding and Order on November 30, 2016, adopting administrative rules regarding telephone company procedures and standards. Substantive Entries on Rehearing were issued on April 5, 2017, and August __, 2017. Consistent with the Finding and Order and Entries on Rehearing some rules were identified as no change rules, some as amended rules, one as a new rule, and one rule was cancelled.

1. Please briefly describe the draft regulation in plain language. Please include the key provisions of the regulation as well as any proposed amendments.

Ohio Adm.Code Chapter 4901:1-6 establishes the procedures and standards for telephone companies in the state of Ohio. Rule amendments include:

- a. The addition of “carrier of last resort” in Ohio Adm.Code 4901:1-6-01(F);
- b. The addition of “interstate-access component” in Ohio Adm.Code 4901:1-6-01(T);
- c. The deletion of “provider of last resort” in Ohio Adm.Code 4901:1-6-01(Y);
- d. The addition of “reasonable and comparatively priced voice service” in Ohio Adm.Code 4901:1-6-01(BB);
- e. The addition of “voice service” in Ohio Adm.Code 4901:1-6-01(PP);
- f. The addition of “willing provider” in Ohio Adm.Code 4901:1-6-01(QQ);
- g. The addition in Ohio Adm.Code 4901:1-6-02(C) of Ohio Adm.Code 4901:1-6-21 as one of the rules for which an exemption cannot be availed by a provider of interconnected voice over Internet protocol-enabled service to the extent necessary for the protection, welfare, and safety of the public.
- h. The addition in Ohio Adm.Code 4901:1-6-02(D) of Ohio Adm.Code 4901:1-6-21 [carrier’s withdrawal or abandonment of basic local exchange service (BLES) or voice service] as one of the rules for which an exemption cannot be availed by a provider of any telecommunications service that was not commercially available as of September 13,

2010, and that employs technology that became available for commercial use only after September 13, 2010;

- i. The addition in Ohio Adm.Code 4901:1-6-07(A) of Ohio Adm.Code 4901:1-6-21 as an exception of the standard advance notice requirement;
- j. The addition in Ohio Adm.Code 4901:1-6-07(C) of the advanced notice requirement for the withdrawal of BLES or voice service in accordance with Ohio Adm.Code 4901:1-6-21;
- k. The change in Ohio Adm.Code 4901:1-6-09(C) from August 31 to January 31 of each year for the filing by an ETC of the annual certification and verification affidavit;
- l. The substitution of “the statewide emergency services internet protocol network steering committee or its designee” in place of “the state of Ohio’s 9-1-1 coordinator” in Ohio Adm.Code 4901:1-6-10(E) and 4901:1-6-31(C);
- m. The addition in Ohio Adm.Code 4901:1-6-14(C)(1)(a)(iii) regarding an incumbent local exchange company (ILEC) making multiple rate increases within a 12-month period.
- n. The addition in Ohio Adm.Code 4901:1-6-14(J) regarding BLES installation and reconnection fees.
- o. The deletion of the following sentence “The commission staff shall provide active leadership in the initial organization of the statewide board and the development of procedures and bylaws under which the board will operate” from Ohio Adm.Code 4901:1-6-19(F);
- p. The deletion of Ohio Adm.Code 4901:1-6-19(H)(1)(d), (f), (g), (h), and (i); 4901:1-6-19(J), 4901:1-6-19 (K), (L) and (N). Additionally, Ohio Adm.Code 4901:1-6-19 has been amended to revise the requirements pertaining to competitive eligible telecommunication carriers (CETC), including to reflect that the flat-rate requirement of Ohio Adm.Code 4901:1-6-19(B) does not apply to a CETC’s free wireless Lifeline;
- q. The revision in Ohio Adm.Code 4901:1-6-19(H)(2) to reflect that subscribers with a household at or below 135 percent of the federal poverty line are eligible for Lifeline benefits and the addition of Veterans’ Administration statement of benefits as an example of acceptable documentation of household income.

- r. The revision in Ohio Adm.Code 4901:1-6-19 to reflect that the ILEC eligible telecommunications carrier (ETC) shall provide subscribers with an additional thirty days following the date of the termination letter to submit documentation or dispute the impending termination of service;
- s. The revision in Ohio Adm.Code 4901:1-6-19 to set forth de-enrollment provisions;
- t. The revision in Ohio Adm.Code 4901:1-6-19 to establish parameters regarding the payment of financial incentives by ETCs and CETCs to community organizations.
- u. The rescinding of the former Ohio Adm.Code 4901:1-6-21, consistent with the termination of the community voicemail pilot program;
- v. The addition of new Ohio Adm.Code 4901:1-6-21, regarding the withdrawal of BLES or voice service by an ILEC and the required notice process, including the mechanism for impacted residential customers unable to obtain reasonable and comparatively priced voice service upon the withdrawal of BLES to file a petition with the Commission. Pursuant to the newly adopted Ohio Adm.Code 4901:1-6-21(F), a sole provider of voice service, including non-ILECs, seeking to withdraw or abandon voice service must formally notify the Commission. Consistent with newly adopted Ohio Adm.Code 4901:1-6-21(G), if residential customers will not have access to 9-1-1 or emergency services, the current provider be subject to the same requirements applicable to ILECs;
- w. The addition in Ohio Adm.Code 4901:1-6-22 of the requirement that inmate service providers must disclose the methods by which its rates or charges will be collected. The rule is also revised to reflect the maximum rate for usage sensitive charges and ancillary charges.
- x. The addition in Ohio Adm.Code 4901:1-6-25(B)(4) that Ohio Adm.Code 4901:1-6-21 and 4901:1-6-27, must be complied with prior to the discontinuation of basic local exchange service by an incumbent local exchange carrier;
- y. The changing of the rule name of Ohio Adm.Code 4901:1-6-27;
- z. The addition of the reference of Ohio Adm.Code 4901:1-6-21 in Ohio Adm.Code 4901:1-6-27(A);

- aa. The addition in Ohio Adm.Code 4901:1-6-37(A) of CETCs to the list of entities required to file an annual report and willing providers to the list entities required to submit an annual assessment report;
- bb. The deletion in Ohio Adm.Code 4901:1-6-37(C) of the requirement that local exchange carriers pay an assessment for the costs incurred by vendors engaged in the community voicemail pilot program; and
- cc. The addition of language in Ohio Adm.Code 4901:1-6-37(C) requiring the payment of a fee for the Commission's support by wireless resellers of lifeline service not presently assessed a fee for such support.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

| Rule | Statutory Authority – Ohio Revised Code |
|--|--|
| 4901:1-6-01 | 4901.13, 4905.84, 4927.01, 4927.02, 4927.03, 4927.10, 4927.11 |
| 4901:1-6-02 through 4901:1-6-20, 4901:1-6-22, 4901:1-6-23, 4901:1-6- 25, 4901:1-6-28, 4901:1-6-32 through 4901:1-6-35 | 4901.13, 4927.03 |
| 4901:1-6-07 | 4901.13, 4927.03, 4927.10 |
| 4901:1-6-21 | 4901.13, 4927.03, 4927.10, 4927.11 |
| 4901:1-6-24 | 4901.13, 4905.84, 4927.03 |
| 4901:1-6-26, 4901:1-6-29 through 4901:1-6-31 | 4901.13, 4927.03 |
| 4901:1-6-27 | 4901.13, 4927.10, 4927.11 |
| 4901:1-6-36 | 4901.13, 4905.84 |
| 4901:1-6-37 | 4905.10, 4905.14 |

3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.

Yes.

Pursuant to the authority delegated to the states, Ohio Adm.Code 4901:1-6-09 implements the federally required designation of ETCs pursuant to 47 U.S.C. 214(e), 47 C.F.R. 54.201(d) and 47 C.F.R. 54.202.

Pursuant to Ohio Adm.Code 4901:1-6-16, telephone companies in possession of customer proprietary network information shall protect customer information in accordance with 47 U.S.C. 222 and in accordance with the rules and procedures prescribed by the Federal Communications Commission (FCC) at 47 C.F.R. 64.2001 to 64.2011.

Pursuant to Ohio Adm.Code 4901:1-6-17, every telephone company shall comply with the FCC's truth in billing requirements in 47 C.F.R. 64.2401 and shall, in conformance with those requirements, accurately identify on every bill all services rendered, the providers of those services, and all billed charges, fees, and taxes so that they are clear and not misleading.

Pursuant to Ohio Adm.Code 4901:1-6-18, providers of telecommunications service, in the course of submitting or executing a change on behalf of a subscriber in the selection of a telephone company, shall obtain authorization and verification of the authorization in accordance with the rules and procedures set forth in 47 C.F.R. 64.1100 to 64.1170 and maintain records of the verification consistent with the rules and procedures of the FCC. To the extent that disputes arise, the applicable remedies include those set forth by the FCC. A provider of telecommunications service shall offer a preferred carrier freeze only in accordance with the rules and procedures prescribed by the FCC.

Pursuant to Ohio Adm.Code 4901:1-6-19, an ILEC that is an ETC under 47 C.F.R. 54.201 shall implement lifeline service throughout the ILEC's traditional service area for its eligible residential customers. All ILEC ETCs must verify customer eligibility consistent with the FCC's requirements in 47 C.F.R. 54, in order to enroll customers into lifeline assistance who qualify through household income-based requirements. All ILEC ETCs must establish procedures to verify an individual's continuing eligibility for both program and income-based criteria consistent with the FCC's requirements in 47 C.F.R. 54.409-54.410. If an ILEC chooses to establish a customer billing surcharge to recover its lifeline expenses, the surcharge shall appear in the section of the bill reserved for taxes and government-mandated charges as set forth in 47 C.F.R. 64.2400-64.2401.

Pursuant to Ohio Adm.Code 4901:1-6-21(B)(1), as part of the process to withdraw BLES by an incumbent local exchange carrier, a copy of the FCC's order under 47 U.S.C. 214 that allows the carrier to withdraw the interstate-access component of its BLES must be provided.

Pursuant to Ohio Adm.Code 4901:1-6-23, the provisioning of pay telephone access lines, including the rates, terms, and conditions of such lines, is subject to applicable laws, including rules or regulations adopted and orders issued by the Public Utilities Commission of Ohio (PUCO) or the FCC.

Pursuant to Ohio Adm.Code 4901:1-6-24(E), the PUCO has such power and jurisdiction relative to wireless service providers to perform the obligations authorized by or delegated to it under federal law and federal regulations including those regarding: (1) the rights and rights and obligations under section 251 of the Telecommunications Act of 1996; (2) mediation and arbitration of disputes and approval of agreements under section 252 of the

Telecommunications Act of 1996; (3) administration of telephone numbers and number portability; (4) certification of telecommunications carriers eligible for universal service funding; and (5) administration of federal regulations on customer proprietary network information.

Pursuant to Ohio Adm.Code 4901:1-6-24(E), interconnection and resale agreements approved under the Telecommunications Act of 1996 are subject to the terms of the agreements, federal law, and Ohio Adm.Code Chapter 4901:1-7.

Pursuant to Ohio Adm.Code 4901:1-6-24(F), to the extent that a wireless service provider or reseller of wireless service seeks certification in Ohio as a telecommunications carrier eligible for universal funding under 47 U.S.C. 214(e), the PUCO has authority to consider the application and impose requirements with respect to lifeline service if the carrier seeks to withdraw funds from the universal service fund for the provision of lifeline service.

Pursuant to Ohio Adm.Code 4901:1-6-29(D), a telephone company may elect to demonstrate compliance with the required customer notification by providing evidence of its satisfying the notification procedures set forth in 47 C.F.R. 63.71.

Pursuant to Ohio Adm.Code 4901:1-6-31(A), the PUCO will utilize existing FCC rules applicable to emergency and outage operations.

Pursuant to Ohio Adm.Code 4901:1-6-31(F)(1), each facilities-based local exchange carrier shall develop, implement, and maintain an emergency plan that includes procedures for maintaining and annually updating a list of customers who have subscribed to the federal telecommunications service priority program, as identified in 47 C.F.R. 64, appendix A.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

The areas of certification and operation of telephone providers relative to their intrastate offerings is under the jurisdiction of the PUCO, and not the FCC. Therefore, for the majority of Ohio Adm.Code Chapter 4901:1-6, the regulation neither exceeds nor is inconsistent with any federal requirements. In other cases (i.e., See responses to Question 3), the regulation relies upon and is consistent with existing federal regulation.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The public purpose of Ohio Adm.Code Chapter 4901:1-6 is to implement the statutory authority regarding retail telecommunication services as set forth in R.C. 4927.04 and 4927.05.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Among other things, the PUCO will be able monitor the number of providers entering and exiting the market and the related service offerings, the number of customers subscribing to the service offerings, and the number of customer complaints.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. If applicable, please include the date and medium by which the stakeholders were initially contacted.

On September 8, 2014, in Case No. 14-1554-TP-ORD, the PUCO issued an entry by U.S. mail and email indicating that a workshop would be conducted on October 6, 2014, to listen to any proposed modifications to the proposed rules. On August 12, 2015, in Case No. 14-1554-TP-ORD, the PUCO issued an entry by U.S. mail indicating that a workshop would be conducted on August 26, 2015, to listen to any proposed modifications to the proposed rules resulting from H.B. 64. The entry was served upon The Ohio Telecom Association (OTA), the office of the Ohio Consumers' Counsel, and the telephone industry list-serve. The workshops were held as scheduled.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

The October 6, 2014, workshop was attended by the OTA, including the Small Incumbent Local Exchange Carriers; Cincinnati Bell Telephone Company (Cincinnati Bell); AT&T Ohio; tw telecom; and CenturyLink. Comments at the workshop were offered by OTA and Cincinnati Bell. Based on the comments provided at the workshop, Ohio Adm.Code 4901-1-6-19(M) was modified in order to be consistent with the FCC's provisions. The August 26, 2015, workshop was attended by representatives of the following: Buckeye Hills-Hocking Valley Regional Development District; OTA; Ohio Cable Telecommunications Association; tw telecom; AT&T; CenturyLink; Ohio Consumers' Counsel; Ohio Poverty Law Center; Appalachian Peace and Justice Network; Advocates for Basic Legal Equality, Inc.; Edgemont Neighborhood Coalition; and Southeastern Ohio Legal Services.

The PUCO also grants other opportunities for stakeholders to provide input on the proposed rules, including the PUCO call center and through the formal comment of the rule review process as set forth in the PUCO's Entries of January 7, 2015, and September 23, 2015.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

No scientific data was used to develop the rules.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The PUCO reviewed the existing rules set forth in Chapter 4901:1-6 and, for the most part, decided that no modifications were necessary as the current rules track, in many respects, R.C. Chapter 4927. Therefore, considerations of alternative regulations were not necessary. In a limited number of cases, the PUCO made some minor modifications to the existing rules for the purpose of clarification. In other cases, some or portions of the existing rule were deleted since they are no longer applicable. The Commission did add a new Ohio Adm.Code 4901:1-6-21 in response to Am. Sub. H.B. 64. In adopting this rule, the Commission limited the requisite obligations to those associated with the protection, welfare, and safety of the public by ensuring the continued accessibility to emergency services.

11. Did the Agency specifically consider a performance-based regulation? Please explain.
Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No. This chapter by its very nature is largely process driven since it implements procedures and standards that track R.C. Chapter 4927.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The PUCO has reviewed other Ohio regulations and found no duplication.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The adoption of Ohio Adm.Code Chapter 4901:1-6 will provide the PUCO with a framework to ensure consistent and predictable application for affected entities as well as to provide guidance to stakeholders when necessary. These rules have been in effect since 2011 without complaints regarding inconsistent application of the Chapter.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community;

The scope of the business community impacted by the adoption of Ohio Adm.Code Chapter 4901:1-6 includes regulated telephone companies and their customers.

b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and

The rules, which have been in effect since the last review, were drafted in an effort to minimize any adverse impact on businesses. While Commission approval is required for the filing of certain applications, most approvals are intended to occur on an automatic basis with minimal time allocated for the purpose of Commission review and/or public input. Other applications are to be simply considered on a zero-day notice basis. Consistent with the adopted Ohio Adm.Code 4901:1-6-21, ILEC providers of BLES and sole providers of voice service must satisfy specified criteria prior to the withdrawal of service.

c. Quantify the expected adverse impact from the regulation. *The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

The exact amount of impact of the adopted rules on the business community is unknown at this time.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

With the exception of Ohio Adm.Code 4901:1-6-21, there is no additional recognized impact to the regulated business community or to their customers as these rules will, for the most part, remain the same as they have since their adoption almost four years ago. The only exceptions are the necessary provisions for the purposes of implementing R.C. 4927.10 and 4927.101, as well as the amendments to R.C. 4927.01, 4927.02, 4927.07, and 4927.11, pursuant to Am. Sub. H.B. 64. With respect to 4901:1-6-21, the regulatory impact is appropriate due to the need to ensure the public safety and welfare relative to the continued accessibility to emergency services.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The rules provide an impacted entity with the opportunity to seek a waiver of a provision of these rules., where applicable.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

The rules in Ohio Adm.Code Chapter 4901:1-6 do not impose specific fines or penalties for failure to comply. Fines or penalties for violation of this chapter may only be ordered by the PUCO after notice and hearing. The PUCO will fully comply with R.C. 119.14 and it is not the PUCO's intent seek to recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

18. What resources are available to assist small businesses with compliance of the regulation?

Commission Staff works with all affected entities, including small businesses, to assist such companies with compliance.