



## Common Sense Initiative

Mike DeWine, Governor  
Jon Husted, Lt. Governor

Carrie Kuruc, Director

### Business Impact Analysis

**Agency Name:** Public Utilities Commission of Ohio (PUCO)

**Agency Contact Info:** Attention: Angela Hawkins, Legal Director

Phone: 614.466.0463 Fax: 614.466.8373

Angela.Hawkins@puco.ohio.gov

Jeff Jones, Chief Legal Atty./Telecommunications and Water

Phone: 614.466.0463 Fax: 614-466-8373

Jeff.Jones@puco.ohio.gov

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

**Rule Number(s):** 4901:1-6-01, 4901:1-6-06, 4901:1-6-07, 4901:1-6-12, 4901:1-6-14, 4901:1-6-19, 4901:1-6-29, 4901:1-6-30

**Date:** October 1, 2019

**Rule Type:**

☐ New

☒ Amended

☐ 5-Year Review

☐ Rescinded

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and

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easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

**1. Please briefly describe the draft regulation in plain language.**

*Please include the key provisions of the regulation as well as any proposed amendments.*

The 132<sup>nd</sup> Ohio General Assembly adopted Substitute House Bill 402 (Sub. H.B. 402) that, among other things, directed the Commission to: adopt rules that permit incumbent local exchange companies (ILECs) to increase rates for basic local exchange service (BLES) by up to \$2.00 on an annual basis; docket a report no later than three years after the effective date to examine the number of exchange lines in service, the aggregate amount of line loss in the state of Ohio since the bill was enacted, and the change in price for those services in each exchange area since the effective date; submit a report to the standing committees in the House of Representatives and the Senate; permit, no earlier than four years from the effective date of the legislation, an ILEC to apply for an exemption for the price cap requirements for BLES; exempt telephone companies from treble damages; and, limit the Commission's ability to consider domestic telephone company change of control application. A workshop relative to these issues was held on February 7, 2019. Pursuant to the Entry of March 20, 2019, comments were sought regarding the Commission Staff's proposed rules implementing Sub. H.B.402.

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 amendment of the definition of "exchange area" in the Ohio Adm.Code 4901:1-6-01(L);
- b. The addition of "incremental cost" in Ohio Adm.Code 4901:1-6-01(P);
- ~~b.c.~~ The addition of "line loss" in Ohio Adm.Code 4901:1-6-01(T);
- d. The amendment of "small business" in Ohio Adm.Code 4901:1-6-01(EE);
- ~~e. The addition of "long run service incremental cost" in Ohio Adm.Code 4901:1-6-01(W);~~
- ~~d.e.~~ The addition in Ohio Adm.Code 4901:1-6-06(D) of the clarification that ILEC BLES pricing flexibility applications filed pursuant to Ohio Adm.Code 4901:1-6-14(C)(1)(c) are subject to one full suspension of the automatic approval process and must be approved or denied not later than 90 days after the date of the suspension;
- f. The addition in Ohio Adm.Code 4901:1-6-07(A) of the clarification that the 15-day advance notice pertains to any material change in the rates, terms, and conditions of any retail service required to be tariffed as set forth in Ohio Adm.Code 4901:1-6-11 and the clarification that customer notice is not required for a decrease in rates.
- ~~e. unless otherwise specified in Chapter 4901:1-6;~~

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- ~~g.~~ The amendment in Ohio Adm.Code 4901:1-6-12(A) that a local exchange carrier must ensure that its offering of basic local exchange service is consistent with sections 4927.07, 4927.10, and 4927.11 of the Revised Code;
- ~~f.~~h. The addition in Ohio Adm.Code 4901:1-6-14(C)(1)(a)(i) and (ii) of the clarification that if an ILEC, within 12 months prior to September 13, 2010, increased its BLES rates for an exchange area, during any subsequent 12-month period it may alter its BLES rates downward by any amount but not below the carrier's incremental cost or upward for an exchange area by not more than a total of \$2.00;
- ~~g.~~i. The revision in Ohio Adm.Code 4901:1-6-14(C)(1)(b) that the downward flexibility by "any amount, but not below the carrier's incremental cost," or the upward flexibility to raise BLES rates by "not more than \$2.00" applies to eligible ILECs;
- ~~h.~~j. The revision in Ohio Adm.Code 4901:1-6-14(C)(1)(c) that the downward flexibility to lower BLES rates for an exchange area at anytime but not below the carrier's incremental cost applies to eligible ILECs;
- ~~i.~~k. The revision in Ohio Adm.Code 4901:1-6-14(C)(1)(c)(i) to reflect the Commission's ability to suspend the automatic approval of the BLES application. Following suspension, the Commission must act to approve or deny the application no later than 90 days after the suspension.
- ~~j.~~l. The revision in Ohio Adm.Code 4901:1-6-14(C)(1)(c)(ii) clarifying that an eligible ILEC that has a BLES application approved in the amount of \$2.00 may not increase its BLES rates for a subsequent 12-month period.
- ~~k.~~m. \_\_\_\_\_ The revision in Ohio Adm.Code 4901:1-6-14(D) to clarify not-for-profit mutual ILECs.
- ~~l.~~ The revision in Ohio Adm.Code 4901:1-6-14(F) to reflect the parameters under which an ILEC may increase rates in order to comply with the eligibility requirements prescribed by the Federal Communications Commission (FCC) for the federal universal service high-cost program.
- ~~m.~~n. \_\_\_\_\_ The addition in Ohio Adm.Code 4901:1-6-14(G) to establish the criteria and process for an ILEC BLES pricing flexibility exemption.
- ~~n.~~o. The addition in Ohio Adm.Code 4901:1-6-14(H) to reflect the process relative to a for-profit ILEC seeking a decrease in its BLES rates.
- ~~o.~~p. The revision in Ohio Adm.Code 4901:1-6-19(H) to reflect that eligibility for Lifeline Service shall be consistent with the FCC's requirements set forth in 47 C.F.R. 54.410.
- ~~p.~~q. The revision in Ohio Adm.Code 4901:1-6-19(T) to reflect the deletion.
- ~~q.~~r. The revision in Ohio Adm.Code 4901:1-6-29 to reflect the process and procedure to be followed at the Commission in those scenarios in which there is a pending application with the FCC regarding either the acquisition of control of a domestic telephone company or a holding company controlling a domestic telephone company or a merger of a domestic telephone company.

~~R.S.~~ The addition in Ohio Adm.Code 4901:1-6-30 to reflect that to the extent that a complaint concerning BLES is within the Commission’s jurisdiction over a telephone company, the telephone company shall permit the Commission or its staff to investigate or inspect the company’s associated plant and facilities.

**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, 4927.12, 4927.123
4901:1-6-06	4901.13, 4927.03, 4927.12
4901:1-6-07	4901.13, 4927.03, 4927.10, 4927.17
<u>4901:1-6-12</u>	<u>4901.13, 4927.03, 4927.08</u>
4901:1-6-14	4901.13, 4927.03, <del>4927.12, 4927.123, 4927.124, 4927.125</del>
4901:1-6-19	4901.13, 4927.03
4901:1-6-29	4901.13, 4905.402, 4927.03
4901:1-6-30	4901.13, 4927.03, <del>4927.19</del>

**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 Ohio Adm.Code 4901:1-6-01(K), an ‘eligible telecommunications carrier is a carrier designated by a state commission as defined in subpart C of 47 C.F.R 54.201

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Pursuant to Ohio Adm.Code 4901:1-6-14(E), in order to comply with the eligibility requirements prescribed by the FCC for the federal universal service high-cost program (e.g., 47 C.F.R. 54.318), an ILEC may increase its rates by any amount.

Pursuant to Ohio Adm.Code 4901:1-6-19, an incumbent local exchange carrier that is an eligible telecommunications carrier under 47 C.F.R. 54.201 shall implement lifeline service throughout the incumbent local exchange carrier's eligible telecommunications carrier's traditional service area for its eligible residential customers. Eligibility for Lifeline service shall be consistent with 47 C.F.R. 54.410. All incumbent local exchange eligible telecommunications carriers 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 incumbent local exchange eligible telecommunications carriers 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 incumbent local exchange carrier 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 4901:1-6-29(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.

**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, 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 the 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 the Ohio Adm.Code Chapter 4901:1-6 is to implement the statutory authority regarding the retail telecommunication services as set for the in R.C. 4927.04 and 4927.05. The specific amendments being addressed in this case pertain to Substitute House Bill 402 of the 132nd Ohio General Assembly that, among other things, directed the Commission to: adopt rules that permit ILECs to increase rates for BLES by up to \$2.00 on an annual basis; docket a report no later than three years after the effective date to examine the

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number of exchange lines in service, the aggregate amount of line loss in the state of Ohio since the bill was enacted, and the change in price for those services in each exchange area since the effective date; submit a report to the standing committees in the House of Representatives and the Senate; permit, no earlier than four years from the effective date of the legislation, an ILEC to apply for an exemption from the price cap requirements for BLES; exempt telephone companies from treble damages; and, limit the Commission's ability to consider domestic telephone company change of control applications.

**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 to 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 January 24, 2019, in Case No. 19-173-TP-ORD, the PUCO issued an entry by U.S. mail and email indicating that a workshop would be conducted on February 7, 2019, to listen to any proposed modifications to the proposed rules resulting from Sub. H.B. 402. The entry was served upon The Ohio Telecom Association (OTA), the office of the Ohio Consumers' Counsel (OCC), and the telephone industry list-serve. The workshop was 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 February 7, 2019, workshop was attended by the OTA, AT&T Ohio, CentryLink, The Ohio Cable Telecommunications Association (OCTA), Cincinnati Bell, Charter Spectrum, and the OCC. Comments at the workshop were offered by AT&T Ohio, OTA and OCTA.

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 Entry of March 20, 2019.

Based on consideration of the formal comments filed by stakeholders, the Commission amended the applicable rules in Ohio Adm.Code Chapter 4901:1-6 as reflected in the redlined response to Question 1 of this BIA.

**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 Ohio Adm.Code 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 rules were deleted since they are no longer applicable.

**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. The 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 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.

**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.*

No new impacts are expected from the adoption of these rules.

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

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. The only exceptions are the necessary provisions for the purposes of implementing Sub. H.B. 402.

### **Regulatory Flexibility**

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**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.

**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 to seek and 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.