



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Angela Hawkins, Public Utilities Commission of Ohio

FROM: Michael Bender, Business Advocate

DATE: September 22, 2022

RE: **CSI Review – Telephone Company Procedures and Standards (OAC 4901:1-6-21, 4901:1-6-25, and 4901:1-6-27)**

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Commission as provided for in ORC 107.54.

Analysis

This rule package consists of one new rule and two amended rules proposed by the Public Utilities Commission of Ohio (PUCO). This rule package was submitted to the CSI Office on August 25, 2021, and the public comment period was held open through September 10, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on August 25, 2021.

Ohio Administrative Code (OAC) 4901:1-6-21, a new rule, provides for the collaborative process established by Amended Substitute House Bill 64 (Am. Sub. HB 64) of the 131st General Assembly that will be utilized when an incumbent local exchange carrier (ILEC) discontinues offering basic local exchange services (BLES). The rule requires the ILEC to give notice of withdrawal of BLES to both its affected customers and the PUCO 120 days prior to discontinuing service, while the collaborative process entails review of the number and characteristics of the affected BLES customers and evaluates the alternative reasonable and comparatively priced voice services available to those customers. OAC 4901:1-6-25 specifies requirements for telephone companies that intend to cease offering any telecommunications service, including providing notice to both the affected customers and the PUCO. The rule is amended to revise the title of an individual to whom notice of

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

withdrawal must be sent. OAC 4901:1-6-27 requires ILEC's to provide basic BLES to all persons or entities in its service area that request its services, although it does outline certain exceptions and also gives the ILEC the ability to request a waiver from compliance with this rule. The rule is amended to revise the rule title for clarity.

During early stakeholder outreach, the PUCO opened a case docket in 2014 for the purpose of reviewing the rules in OAC 4901:1-6 and solicited comments from interested stakeholders on proposed revisions. The PUCO adopted rules regarding telephone company procedures and standards in November 2016, but the rules went through five rounds of rehearing through October 2017. After the PUCO subsequently submitted the rules to the Joint Committee on Agency Rule Review, the PUCO pulled several of them from review for further consideration, with OAC 4901:1-6-21 among those withdrawn. In July 2019, the PUCO solicited further comments on proposed revisions to OAC 4901:1-6-21. During the CSI public comment period, the PUCO received comments from AT&T Ohio, the Ohio Cable Telecommunications Association (OCTA), the Ohio Telecom Association (OTA), Advocates for Basic Legal Equality, Inc., the Legal Aid Society of Columbus, the Office of Consumers' Counsel, the Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services (the latter six organizations collectively referred to by the PUCO as the "Consumer Groups"). Comments focused especially on the voice service withdrawal and 9-1-1 service access provisions in addition to provisions regarding reasonable and comparatively priced voice service, the Federal Communications Commission's (FCC) urban floor rate, the one hundred and twenty-day time frame, and notices of withdrawal of service.

AT&T Ohio, the OCTA, and the OTA asserted that the PUCO exceeded the regulatory authority granted to the PUCO by subjecting voice service providers who withdraw service to the requirements of OAC 4901:1-6-21. They maintained that Am. Sub. HB 64 only authorized the PUCO to adopt rules regarding ILEC's that withdraw provision of BLES. Alternatively, the Consumer Groups supported the inclusion of these provisions subjecting voice service providers to the rule, contending that the health and safety of consumers would be jeopardized if a provider abandons voice service that is the only access to 9-1-1 service for a consumer. The PUCO originally decided not to remove the provisions, saying that while Am. Sub. HB 64 did not specifically address voice service providers that withdraw service, other language in the ORC permitted the PUCO to adopt rules with respect to the protection, welfare, and safety of the public. Consequently, the PUCO determined that subjecting voice service providers to the requirements of the rule would accomplish such a legislative task in order to maintain consumer access to crucial 9-1-1 services. However, with the signing of Substitute House Bill 430 of the 134th General Assembly, the provisions were deemed moot and no longer applicable. The PUCO then removed the provisions from the rule.

The OTA believed that the PUCO was not authorized to define "reasonable and comparatively priced voice service" in a manner that deviates from the ORC. The PUCO replied that that ORC authorizes

it to define the term and include service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and that it is competitively priced in the definition. The OCTA said that utilizing a price at or below the FCC's urban rate floor in deeming voice service to be competitively priced did not make sense, as many competitive prices in the FCC's survey are above average by definition. Instead, the OCTA suggested that using two standard deviations above the national average rate would be more appropriate and cited federal regulations that utilize such a measure. The PUCO amended the rule to state that a voice service is presumptively deemed competitively priced if the price is two standard deviations above the urban average calculated by the FCC on an annual basis. The Consumer Groups suggested that the one hundred and twenty-day time frame allotted for the PUCO to complete its investigation and for customers to find an alternative provider should begin when the FCC issues a final order, as there is a reconsideration process for initial FCC orders. Additionally, the Consumer Groups proposed that the notice of withdrawal of services required to be sent by ILEC's be sent every thirty days until discontinuance of service. The PUCO did not make these changes, saying that the ORC does not require the provision of multiple notices but does contain language stating that the triggering event for commencement of an ILEC's abandonment of service is an effective FCC order. Lastly, the PUCO made a minor typographical correction upon inquiry from the CSI Office.

The business community impacted by the rules includes all ILEC's. The adverse impacts created by the rules include the notifications that an ILEC must send to its customers and to the PUCO, the obligation to provide access to reasonable and comparatively priced voice service, returning deposits, filing an application to withdraw services from a tariff, and the requirement for an ILEC to provide BLES to all persons or entities that request service in its service area. The PUCO states that the adverse impacts to business are justified to implement ORC requirements and to ensure the continued provision of access to reasonable and comparatively priced voice service.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.