Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

MEMORANDUM

TO: Jeffrey Jones, Public Utilities Commission of Ohio

FROM: Michael Bender, Business Advocate

DATE: December 29, 2022

RE: **CSI Review – Local Exchange Carrier-to-Carrier Rules (OAC 4901:1-7-01, 4901:1-7-02, 4901:1-7-03, 4901:1-7-04, 4901:1-7-05, 4901:1-7-06, 4901:1-7-07, 4901:1-7-08, 4901:1-7-09, 4901:1-7-10, 4901:1-7-11, 4901:1-7-12, 4901:1-7-13, 4901:1-7-14, 4901:1-7-15, 4901:1-7-16, 4901:1-7-17, 4901:1-7-18, 4901:1-7-19, 4901:1-7-20, 4901:1-7-21, 4901:1-7-22, 4901:1-7-24, 4901:1-7-25, 4901:1-7-26, and 4901:1-7-27)**

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 twenty-one amended rules and five no-change rules proposed by the Public Utilities Commission of Ohio (PUCO) as part of the statutory five-year review process. This rule package was submitted to the CSI Office on April 20, 2022, and the public comment period was held open through May 20, 2022. A supplemental comment period was held from September 21, 2022, through October 17, 2022. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 21, 2022.

Ohio Administrative Code (OAC) 4901:1-7-01 specifies definitions related to telecommunications. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-02 states that the obligations in the chapter apply to all telephone companies pursuant to U.S. Code. The rule is amended to update language and to update the date of the effective version of any cited U.S. Code or federal regulation. OAC 4901:1-7-03 provides for local presubscribed interexchange carrier (LPIC) change charges by a local exchange carrier (LEC) to intrastate intra-local access and transport area toll service providers or customers. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-04 allows a rural telephone company, upon receiving a bona fide request for interconnection, services, or network elements, to file a UNC application for the PUCO to review in order to maintain its provisional rural telephone company exemption referenced in U.S. Code. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-05 allows an incumbent local exchange carrier (ILEC) which serves less than two percent of the nation's installed subscriber lines, upon receiving a bona fide request for interconnection, to file a UNC application for the PUCO to review in order to seek a suspension or modification of any portion of U.S. Code as a rural carrier. Originally submitted as a no-change rule, the rule is amended to update language.

OAC 4901:1-7-06 sets forth the general standards for interconnection and the basic requirements for interconnection requests. OAC 4901:1-7-07 provides for negotiation and approval of requests for both interconnection agreements and amendments to existing interconnection agreements between telephone companies. The rule is amended to update a referenced PUCO department division name from "telecommunications and technology" to "regulatory utility services." OAC 4901:1-7-08 requires telephone companies to negotiate in good faith and sets forth the process for mediation of interconnection agreements between telephone companies by an individual appointed by the PUCO. The rule is amended to update a referenced PUCO department division name from "telecommunications and technology" to "regulatory utility services." OAC 4901:1-7-09 sets forth the procedures for arbitration of interconnection agreements between telephone companies conducted by a panel appointed by the PUCO. OAC 4901:1-7-10 allows any telephone company involved in a pending formal carrier-to-carrier complaint to ask the PUCO for mediation.

OAC 4901:1-7-11 requires an ILEC to provide physical or virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises if collocation is the requested method of interconnection. OAC 4901:1-7-12 provides for the compensation of a telephone company for the transport and termination of non-access telecommunications traffic. The rule is amended to update language and require all rates, terms, and conditions for the transport and termination of non-access reciprocal compensation traffic to be established pursuant to a bill-and-keep agreement as defined by federal regulation. OAC 4901:1-7-13 provides for the compensation of an intermediate telephone company carrying traffic originating on one telephone company's network and terminating on a second telephone company's network. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-14 provides for the compensation of a LEC for intrastate switched access reciprocal compensation traffic. The rule is amended to update language and to clarify that a rate-of-return regulated ILEC and any LEC that does not own a terminating tandem may assess terminating tandem switched tandem charges consistent with federal law. OAC 4901:1-7-15 requires meet point billing arrangements to be used when billing for compensation for jointly provisioned switched access service to another carrier by more than one LEC. Originally submitted as a no-change rule, the rule is amended to update language.

OAC 4901:1-7-16 specifies an ILEC's duty to provide access to unbundled network elements to any requesting telephone company for the provision of telecommunications service. Originally submitted as a no-change rule, the rule is amended to update language and remove a provision regarding the pricing of unbundled network elements. OAC 4901:1-7-17 sets forth the general principles and structure standards for rates set by the PUCO for elements provided by an ILEC to other telephone companies. Originally submitted as a no-change rule, the rule is amended to update language, eliminate provisions requiring an ILEC to provide certain information to the PUCO, and remove provisions regarding rate structures and replace them with citations to federal regulations. OAC 4901:1-7-18 authorizes the PUCO to set interim rates in setting prices while arbitrating issues when it determines it has insufficient time to review an ILEC's cost information or when it has concerns with the cost studies from its cursory review. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-19 provides for the calculation of forward-looking economic costs that a providing carrier estimates that it will incur and which it can subsequently recover in the setting of the prices of their elements. Originally submitted as a no-change rule, the rule is amended to update language and to remove provisions describing how technology, cost of capital, and depreciation factor into the total element long-run incremental cost of an element. OAC 4901:1-7-20 sets forth requirements for the cost study that a LEC must submit to the PUCO, including for the accompanying work papers and source documents. Originally submitted as a no-change rule, the rule is amended to update language.

OAC 4901:1-7-21 provides for the resale of telecommunications services, retail promotions, and contracts by carriers. Originally submitted as a no-change rule, the rule is amended to update language and incorporate citations to federal regulations. OAC 4901:1-7-22 specifies requirements and prohibitions for carriers when initiating and conducting customer migration to another carrier. The rule is amended to update language and to update the federal regulation number that is referenced. OAC 4901:1-7-24 specifies that customers have the ability to retain the same telephone number when changing from one telephone company to another at the same location. OAC 4901:1-7-25 requires number holding telephone companies to provide copies of all NXX code requests to the North American numbering plan administrator or thousands block requests to the pooling administrator to the PUCO upon request. The rule is amended to update a referenced PUCO department division name from "telecommunications and technology" to "regulatory utility services." OAC 4901:1-7-26 sets forth competition safeguards regarding the disclosure of certain information to competitors and the keeping of records by a telephone company. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-7-27 requires a LEC to notify the PUCO of its intention to terminate another LEC's access to its network due to material default when doing so would result in the disconnection of the latter LEC's customers from the local telecommunications network without a customer notice. The rule is amended to update language and to update a referenced PUCO department division name from “telecommunications and technology” to “regulatory utility services.”

During early stakeholder outreach, the PUCO issued an Entry in Case No. 22-48-TP-ORD (22-48) notifying stakeholders of its review of OAC 4901:1-7 and conducted a remote workshop on March 1, 2022, to receive feedback from both interested stakeholders and the general public. The Entry was served upon the Ohio Telecom Association (OTA), the Ohio Consumers’ Counsel (OCC), and the telephone industry listserv. The OTA filed comments with recommendations regarding OAC 4901:1-7-02 and 4901:1-7-12 which were considered by the PUCO when drafting revisions to those rules. The PUCO issued a second Entry on September 21, 2022, notifying stakeholders of the supplemental comment period. This Entry was served upon the OTA, the Ohio Cable Telecommunications Association (OCTA), the OCC, and the telephone industry listserv. During the first CSI public comment period, the PUCO received comments from the OCTA and the OTA. During the supplemental comment period, comments were submitted by the OCTA.

In its first set of comments, the OCTA urged the PUCO to modify the rules with respect to resale service pricing to be more consistent with the determinations of the Federal Communications Commission (FCC). The OTA stated that it did not object to the OCTA’s proposal. The PUCO denied this proposal, stating that while the FCC has granted ILEC’s forbearance from the avoided-cost resale pricing obligations currently reflected in the OAC, such action only constitutes determination of forbearance and does not eliminate the obligations set forth in the U.S. Code. The PUCO did agree, however, to forbear from enforcement of this provision as long as the FCC continues to forbear and until action is taken to amend the federal law. After the first public comment period concluded, the PUCO decided to amend the rules further to improve readability, eliminate duplications, reduce the number of regulatory restrictions, and update typography and grammar. The OCTA subsequently submitted additional comments regarding the new changes, arguing that some provisions should be deleted due to redundancy while others should be revised to be more consistent with federal law or regulations or to clarify which actions are required and which are simply permitted. The PUCO accepted some of the OCTA’s recommendations while denying others.

The business community impacted by the rules includes telephone companies. The adverse impacts created by the rules include the time and resources associated with negotiating and implementing interconnection arrangements such as compensation for the transmission of traffic among telephone companies, undergoing mediation or arbitration with the PUCO, compiling forward-looking economic cost studies and accompanying work papers and source documents for submission to the PUCO, and maintaining records. The PUCO states that the adverse impacts are justified to be consistent with and comply with federal law and regulations, streamline the interconnection process, provide clear and consistent requirements and procedures, and ensure timely and economically efficient connectivity of telephone company networks.

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.