



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Sean McCullough, Director

Business Impact Analysis

Agency, Board, or Commission Name: Public Utilities Commission of Ohio (PUCO)

Rule Contact Name and Contact Information:

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 (a general description of the rules' substantive content):

Ohio Adm.Code Chapter 4901:1-6 Telephone Company Procedures and Standards

Rule Number(s): 4901:1-6-21, 4901:1-6-25, and 4901:1-6-27

Date of Submission for CSI Review:

Public Comment Period End Date:

Rule Type/Number of Rules:

- | | |
|--|---|
| <input checked="" type="checkbox"/> New/ <u>1</u> rules | <input type="checkbox"/> No Change/ <u> </u> rules (FYR? <u> </u>) |
| <input type="checkbox"/> Amended/ <u>2</u> rules (FYR? <u> </u>) | <input type="checkbox"/> Rescinded/ <u> </u> rules (FYR? <u> </u>) |

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 regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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

Reason for Submission

1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rules for CSI review.

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule:

- ☐ a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- ☐ b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- ☒ c. Requires specific expenditures or the report of information as a condition of compliance.
- ☐ d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

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.

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 on August 26, 2015. Pursuant to the Entry of September 16, 2015,

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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.

On November 30, 2016, the Commission issued a Finding and Order. As a result, some of the rules in Ohio Adm.Code Chapter 4901:1-6 were updated.

Pursuant to the Entry of July 2, 2019, the Commission requested comments on proposed revisions to Ohio Adm.Code 4901:1-6-02, 07, and 21. Pursuant to the Second Supplemental Finding and Order of October 21, 2020, the Purpose and Scope rule, Ohio Adm.Code 4901:1-6-02 Paragraph (H), was updated to reflect October 1, 2020, as the date whereby citations to the United States Code (U.S.C) and the Code of Feral Regulations (C.F.R.) is incorporated by reference.

Pursuant to the Entry of August 25, 2021, the Commission sought comments on a new proposed Ohio Adm.Code 4901:1-6-21 regarding the withdrawal or abandonment of basic local exchange service (BLES) or voice service by a provider of telecommunications service. The rule was adopted on January 12, 2022, pursuant to the Third Supplemental Finding and Order, as amended by the Entry on Rehearing of May 18, 2022. Pursuant to the August 10, 2022 Fourth Supplemental Finding and Order, the adopted revisions to Paragraphs(F) and (G) of proposed Ohio Adm.Code 4901:1-6-21were deemed moot and no longer applicable due to the recent adoption and signing of Substitute House Bill 430 of the 134th Ohio General Assembly. Additionally, Ohio Adm.Code 4901:1-6-25 and Ohio Adm.Code 4901:1-6-27 were adopted and amended. The amendments were limited to revising in Ohio Admin. Code 4901:1-25 the titles of the individuals for whom the requisite notice is to be provided and in Ohio Adm Code 4901:1-6-27 the revising of the rule caption.

2. 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 telephones companies in the state of Ohio. The proposed rule amendments include:

- a) The addition of new Ohio Adm.Code 4901:1-6-21 regarding applicable process and obligations related to the withdrawal of BLES by an incumbent local exchange carrier (ILEC);

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

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4901.13, 4927.03, 4927.10, 4927.11

- 4. 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.

Pursuant to Ohio Adm.Code 4901:1-6-21(A) A voice service is presumptively deemed competitively priced subject to rebuttal, if the rates do not exceed the higher of either: (1) the ILEC BLES rate by more than twenty percent or, (2) the FCC's reasonable comparability benchmark for voice services which is defined as two standard deviations above the urban average that is calculated by the FCC on annual basis as defined in 47 C.F.R. 54.313(a)(2).

Pursuant to Ohio Adm.Code 4901:1-6-21(B)(1), as part of the process to withdraw BLES by an ILEC, 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.

- 5. 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, relative to proposed Ohio Adm.Code 4901:1-6-21, the regulation neither exceeds nor is inconsistent with any federal requirements.

- 6. 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 4901:1-6-21 is to implement the statutory authority regarding the withdrawal or abandonment of BLES as set forth in R.C. 4927.10.

- 7. 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 subscribers to whom notice is given pursuant to paragraph (B)(2) of proposed Ohio Adm.Code 4901:1-

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6-21 and the number of subscribers who file a petition pursuant to paragraph (C) of the proposed rule or who are identified by the collaborative process referenced in the rule.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? **No**
If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Development of the Regulation

9. 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 August 25, 2021, in Case No. 14-1554-TP-ORD, the PUCO issued an entry by electronic service and/or U.S. mail calling for comments relative to proposed Ohio Adm.Code 4901:1-6-21. The entry was served upon all prior commentors and interested persons of record in the docket, including certificated carriers, industry groups, and consumer entities.

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

Initial comments were filed on September 1, 2021, by AT&T Ohio, The Ohio Cable Telecommunications Association (OCTA), The Ohio Telecom Association (OTA), Advocates for Basic Legal Equality, Inc., Legal Aid Society of Columbus, office of the Ohio Consumers' Counsel, Ohio Poverty Law Center, Pro Seniors, Inc., and Southeastern Ohio Legal Services. Reply comments were filed on September 10, 2021, by these same entities

11. 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.

- 12. 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?**

No alternative regulations were proposed as the adopted rule merely implements the statutory guidance given the Commission by the Ohio General Assembly.

- 13. 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 as given to the Commission by the Ohio General Assembly.

- 14. 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. There is no other state agency responsible to oversee the withdrawal of basic local exchange telephone service.

- 15. 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.**

A notice of withdrawal or abandonment will be sent to all affected customers providing for a 120-day notice period during which petitions can be filed by affected individuals or their representatives alleging that the customer will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by the ILEC. Alternatively, if a residential customer is identified by the collaborative process established under amended Substitute H.B. 64 as a customer who will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES offered by the ILEC, that customer may be treated as though they timely filed a petition.

Adverse Impact to Business

16. 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; and All ILECs.**
- b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,);**
ILECs must comply with the requirements of Rule 21, including the notification obligations and potential continued obligation to provide access to a reasonable and comparatively priced voice 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 notification and potential continued offering of access to a reasonable and comparatively priced voice service will have an unknown time and financial cost associated with them.

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

The obligations set forth in adopted Ohio Adm.Code 4901:1-6-21 are justified in order to ensure the continued provision of access to a reasonable and comparatively priced voice service following the statutory guidance given the Commission by the Ohio General Assembly.

The only modification to Ohio Adm.Code 4901:1-6-25 was to modify the title of the staff person at the PUCO to receive copies of the notices sent to customers of the withdraw of telecommunications service by a telephone company. This rule implements the statutory requirements of R.C. 4927.07. There were no other amendments made this rule which has been in effect since January 20, 2011.

Pursuant to R.C. 4927.11(A), ILECs are the carrier of last resort as discussed in Ohio Adm.Code 4901:1-6-27. Notably, however, the only amendment to this rule is modifying the title from “Provider of last resort” to “Carrier of last resort.” The latter term is more

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widely used within the telecommunications industry and thus the change in the title of this rule. There were no other amendments to this rule which has been in effect since January 20, 2011.

Regulatory Flexibility

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

The language of rule does not provide an ILEC with the opportunity to see a waiver of a provision of Rule 21. To the extent that the Commission has adopted any requirements that go beyond R.C. 4927.10 those additional requirements would be subject to the general ability authorized by Paragraph (E) of Ohio Adm.Code 4901:1-6-02.

19. 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 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 to recover administrative fines or civil penalties on any small business for a first-time paperwork violation.

20. 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.