



Common Sense Initiative

Mike DeWine, *Governor*
Jon Husted, *Lt. Governor*

Joseph Baker, *Director*

MEMORANDUM

TO: Jeffrey Jones, Public Utilities Commission of Ohio

FROM: Michael Bender, Business Advocate

DATE: June 12, 2024

RE: **CSI Review – Telephone Company Procedures and Standards (OAC 4901:1-6-01 through 4901:1-6-16 and 4901:1-6-18 through 4901:1-6-37)**

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 eleven amended rules and twenty-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 November 1, 2023, and the public comment period was held open through December 18, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on November 1, 2023.

Ohio Administrative Code (OAC) 4901:1-6-01 contains definitions pertaining to the procedures and standards for telephone companies in the state of Ohio. OAC 4901:1-6-02 provides the purpose and scope of the chapter. The rule is amended to update language. OAC 4901:1-6-03 authorizes the PUCO to monitor and investigate a telephone company's compliance with PUCO rules and orders. OAC 4901:1-6-04 requires telephone companies to use the most up-to-date telecommunications filing form to complete telephone-related applications and notice filings. OAC 4901:1-6-05 sets forth the automatic approval and notice filing processes for filings pursuant to the rules of the chapter. The rule is amended to clarify when filings involving tariffs take effect. OAC 4901:1-6-06 authorizes the

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PUCO and certain PUCO staff to impose full or partial suspensions of any automatic approval process, notice filing, or tariff approved pursuant to the chapter. OAC 4901:1-6-07 contains requirements for customer notices that must be provided by telephone companies. OAC 4901:1-6-08 provides for the certification of telephone companies. OAC 4901:1-6-09 provides for the designation of eligible telecommunications carriers.

OAC 4901:1-6-10 provides for the certification of competitive emergency services telecommunications carriers. OAC 4901:1-6-11 lists the services that must be tariffed by telephone companies and telecommunications carriers as well as the information that must be filed alongside tariffs for approval by the PUCO. Originally submitted as a no-change rule, the rule is amended to update language and remove the subject of unnecessary construction charges as those are addressed in OAC 4901:1-6-33. OAC 4901:1-6-12 describes the standards by which local exchange carriers (LECs) must provide basic local exchange service (BLES). OAC 4901:1-6-13 requires telephone companies providing telephone exchange service to maintain 911 service on a residential customer's line for at least fourteen days immediately following disconnection due to nonpayment. OAC 4901:1-6-14 sets forth tariff requirements and pricing constraints for BLES rates provided by LECs. The rule is amended to update citations. OAC 4901:1-6-15 requires LECs providing BLES to make a telephone directory or directory information available to its customers. OAC 4901:1-6-16 requires any communication by a telephone company to be truthful, clear, conspicuous, and accurate. OAC 4901:1-6-18 provides for proper changes in providers of telecommunications services to prevent against slamming. OAC 4901:1-6-19 specifies lifeline service requirements for incumbent local exchange carriers (ILECs) and competitive eligible telecommunications carriers (CETCs). The rule is amended to remove a citation.

OAC 4901:1-6-20 requires telephone companies that provide toll service to offer discounts to individuals with communications disabilities. OAC 4901:1-6-21 provides for the withdrawal or abandonment of BLES or voice service by an ILEC. Originally submitted as a no-change rule, the rule is amended to update language. OAC 4901:1-6-22 establishes requirements for providers of inmate operator service. OAC 4901:1-6-23 requires ILECs to provide pay telephone access lines and local usage to such lines to payphone service providers upon request if such services are offered to payphone service providers. OAC 4901:1-6-24 contains requirements for wireless service providers. The rule is amended to clarify that the provisions are applicable to "facilities-based" wireless service providers. OAC 4901:1-6-25 provides for the withdrawal of telecommunications service by a telephone company. Originally submitted as a no-change rule, the rule is amended to subject an application to cease such services to a sixty-day automatic approval process, with the caveat that the services may still be required to be offered by Ohio or federal law. OAC 4901:1-6-26 provides for the abandonment of telecommunications service by a telephone company. OAC 4901:1-6-27 requires an ILEC to provide BLES to all individuals or entities in its service area that request service except under certain circumstances. OAC 4901:1-6-28 describes the requirements for a telephone company

to seek bankruptcy protection. OAC 4901:1-6-29 sets forth procedures for telephone companies to notify the PUCO of changes in operations. OAC 4901:1-6-30 requires telephone companies to maintain company records and respond to inquiries and complaints from the PUCO or consumers in a timely manner.

OAC 4901:1-6-31 provides for the emergency and outage operations of facilities-based LECs. The rule is amended to include the email address for the PUCO outage coordinator. OAC 4901:1-6-32 establishes the process by which an ILEC may propose to change the boundary of an exchange area. Originally submitted as a no-change rule, the rule is amended to update grammar. OAC 4901:1-6-33 allows an ILEC providing BLES to levy excess construction charges to applicants for service in situations where the ILEC must construct permanent facilities on public rights-of-way to furnish service. Originally submitted as a no-change rule, the rule is amended to subject the provisions for excess construction charges to a thirty-day approval process. OAC 4901:1-6-34 requires telephone companies to file copies of any contracts, agreements, or arrangements with other public utilities regarding construction, maintenance, use of plants, use of properties, services, rates, or charges with the PUCO. OAC 4901:1-6-35 requires telephone companies to submit reports filed with the Federal Communications Commission to the Director of the PUCO Utilities Department upon request. OAC 4901:1-6-36 establishes procedures for the administration and assessment of the intrastate Telecommunications Relay Service. OAC 4901:1-6-37 requires telephone companies, CETCs, and wireless service providers to file an annual report for fiscal assessment with the PUCO.

During early stakeholder outreach, the PUCO issued an Entry in Case No. 23-817-TP-ORD on August 21, 2023, to seek comments from interested parties at a September 20, 2023, rule revisions workshop. The Entry was served upon the Ohio Telecom Association (OTA), the Ohio Cable Telecommunications Association, the Ohio Consumers' Counsel, the PUCO's telephone industry listserv, and other interested parties of record. At the workshop, the OTA urged the PUCO to revise the rules to limit the latter's authority to review certain charges and withdrawal services pursuant to statute. The PUCO did not make these changes at that time. During the CSI public comment period, the PUCO received comments from the OTA and jointly from the Ohio Consumers' Counsel, the Ohio Poverty Law Center, and the Legal Aid Society of Southwest Ohio, LLC (collectively referred to as the "Consumer Groups").

The OTA contended that the PUCO's asserted authority to review charges and fees exceeded the scope of the authorizing statutes in ORC Chapter 4927, particularly the requirements for PUCO approval of charges for special construction when a telephone company needs to build facilities in certain circumstances to fulfill a customer's request for service. The OTA took issue with other requirements for the review of the reasonableness of late payment charges and installation and reconnection fees for BLES, noting that the ORC created an explicit process for an ILEC to apply to the PUCO for an exemption from the regulation of BLES. Additionally, the OTA did not consider

the rules authorizing the review of prices and restrictions on the withdrawal of services to be useful or beneficial pursuant to ORC 106.03(A)(4). The Consumer Groups rejected the OTA's rationale, arguing that capping rates for BLES but allowing a utility to charge unreasonable amounts for construction fees, late payment charges, and installation fees would be contrary to the intention of the authorizing statutes. The PUCO pointed out that, as far back as 2010, it had determined that ORC 4927.12 provided it with the authority to prescribe by rule the manner in which terms and conditions for BLES and for installation and reconnection fees shall be tariffed. Therefore, the PUCO denied the OTA's suggestions to remove its ability to review such fees but did revise the rules to provide clarification with respect to the approval of certain tariffs, acknowledge ILECs who have been granted the statutory BLES pricing flexibility exemption, and subject the provisions of excess construction charges to a thirty-day approval process.

Regarding carriers of last resort relief, the OTA believed that the rules improperly suggested that an ILEC must apply to the PUCO for relief rather than simply provide notification. The Consumer Groups asserted that the rules did not require an application, only the filing of a notice. The PUCO agreed with the Consumer Groups but did update language in the rules to provide clarification. The OTA considered the PUCO's asserted authority to condition the withdrawal of services to be excessive of its statutory authority, noting that ORC 4927.07 permits a telephone company to withdraw any service other than BLES and pole and conduit access if it gives at least thirty days' notice to the PUCO and affected customers. The PUCO revised the rules to instead subject an application to cease such services to a sixty-day automatic approval process, with the caveat that the services may still be required to be offered by Ohio or federal law. Lastly, the PUCO revised the rules to correct typographical errors and clarify the requirement for facilities-based wireless service providers to notify the PUCO of any changes in operations.

The business community impacted by the rules includes regulated telephone companies. The adverse impacts created by the rules include submitting reports and information, obtaining PUCO approval for the filing of certain applications, customer notice requirements, obtaining certification and designation, submitting tariffs, maintaining service, pricing constraints, following proper procedures for withdrawal and abandonment of service, providing notification, recordkeeping, and responding to complaints. The PUCO states that the adverse impacts to business are justified to implement statutory requirements and provide a framework for the telecommunications market.

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.