



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

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H.B. 402

132nd General Assembly
(As Introduced)

Reps. Hill, R. Smith, Lang, Seitz, Cera, Becker, Celebrezze, Scherer, Rezabek, Riedel, Koehler, Manning, Kick, Reineke

BILL SUMMARY

Telecommunications services changes

- Repeals telephone company requirements for basic local exchange service (BLES) standards.
- Allows incumbent local exchange carriers (ILECs) to increase BLES rates by up to 20% of the "current and total" BLES rate amount, except rates may be increased as needed to meet federal eligibility requirements for the Universal Service High-Cost program.
- Requires a telephone company to provide 15 days' advance notice to customers of material changes in the rates, terms, and conditions of only services required to be tariffed by the PUCO or the Federal Communications Commission (FCC), rather than "any service," as required under current law.
- Revises state policy for the provision of telecommunications services.
- Expands the scope of a provision in current law that governs the construction and use of communications systems, which would apply certain powers and restrictions to telephone and communications companies regardless of their status as public utilities.

PUCO authority and jurisdiction

- Repeals the PUCO-approval requirement for acquisitions and mergers regarding domestic telephone companies.

- Requires a telephone company to notify PUCO of a merger or transfer-of-control application filed with the FCC.
- Allows PUCO to investigate or inspect any telephone-company plant and facility, to the extent of the PUCO's jurisdiction and only in response to a consumer complaint concerning BLES.
- Requires PUCO to amend its rules, not later than 120 days following the bill's effective date, to bring them into conformity with the bill and to amend its rules governing Lifeline service to ensure consistency with the federal Lifeline program.

Exemption from the treble damages requirement

- Excludes telephone companies from treble damages liability resulting from a violation of or failure to comply with the Public Utilities Law or PUCO orders.

Emergency telephone system

- Modifies, for purposes of the Emergency Telephone System Law, the definitions of "telephone company" and "enhanced wireline 9-1-1" to expand 9-1-1 providers covered under the law.
- Expands the entities that are not liable for civil-action damages in connection with certain aspects of a 9-1-1 system or the provision of assistance to a public utility, municipal utility, or state or local government in cases of public emergency.

Applicability of the Deceptive Trade Practices Law

- Modifies, for purposes of the Deceptive Trade Practices Law, the definition of "telephone company" to mean a person that, in the normal course of business, offers a local telephone directory to customers or lists business names in a directory assistance database.

Contractual and federal obligations

- States that nothing in the sections amended by the bill is to be construed to affect any existing contractual obligation or any right or obligation under federal law or rules.

CONTENT AND OPERATION

Overview

The bill further deregulates certain aspects of telecommunications services, a process that began with S.B. 162 of the 128th General Assembly, with changes to telecommunications services requirements, especially in regard to the provision of basic local exchange service (BLES) and the Public Utilities Commission's (PUCO's) authority and jurisdiction over certain telecommunications services. Additionally, the bill expands the law governing the 9-1-1 system to include providers that are not covered by current law.

Telecommunications services changes

BLES standards repeal

The bill repeals the requirements that: (1) a telephone company providing BLES must conduct its operations to ensure that the service is available, adequate, and reliable, and (2) PUCO must adopt rules prescribing certain standards for the provision of BLES. Currently, the standards prescribed by the PUCO rules address service installation, outages, disconnections, reconnections, and billing due dates.¹

BLES rate increases

The bill modifies the amount by which an incumbent local exchange carrier (ILEC) may increase rates for BLES. The bill allows an ILEC to increase its BLES rates in a 12-month period by up to 20% of the ILEC's "current and total" BLES rate or by up to \$1.25. Current law restricts an ILEC's BLES rate increase to \$1.25 per 12-month period.²

However, under the bill, PUCO must allow an ILEC to increase its BLES rates by any amount necessary to comply with the Federal Communications Commission's (FCC's) eligibility requirements for the federal Universal Service High-Cost program. The bill allows PUCO to order these rate increases to be phased-in over a period not to exceed three years if PUCO determines the phase-in is necessary to protect the public interest.³

¹ R.C. 4927.08 (repealed).

² R.C. 4927.12(C)(1), (2), and (3) and O.A.C. 4901:1-4-11, as that rule existed on September 13, 2010.

³ R.C. 4927.12(G).



Continuing law requires that an ILEC must either receive a competitiveness determination from the PUCO (see **COMMENT**) or have increased its BLES rates in the 12 months prior to September 13, 2010, before the ILEC may increase BLES rates at all.⁴

Notice of material changes in rates, terms, and conditions

The bill narrows the scope of a provision requiring a telephone company to provide at least 15 days' advance notice to its affected customers of material changes in rates, terms, and conditions. Current law requires this notice to be provided for material changes in the rates, terms, and conditions of *any service*, whereas the bill requires this notice to be provided for material changes in the rates, terms, and conditions of "any service required to be tariffed by [PUCO] or [FCC]."⁵ Under current PUCO rules, the following retail telecommunications services are required to be tariffed: 9-1-1 service provided in Ohio, BLES (including BLES installation and reconnection fees and Lifeline service rates or discounts), carrier access, N-1-1 service, pole attachments and conduit occupancy, pay telephone access lines, toll presubscriptions, excess construction charges, inmate operator services, and telecommunications relay service.⁶

State policy

Under the bill, state telecommunications policy is revised to be consistent with the bill's deregulation of certain aspects of telecommunications services.

The bill adds the policy objective to allow and encourage competition and market forces to determine the availability, prices, terms, and other conditions of providing voice services.

The bill repeals the following policy objectives:

- To recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of telecommunications services where appropriate;
- To consider the regulatory treatment of competing and functionally equivalent services and, to the extent practicable, provide for equivalent regulation of all telephone companies and services.

The bill revises other policy objectives as follows:

⁴ R.C. 4927.12(C)(1), (2), and (3).

⁵ R.C. 4927.17(A).

⁶ O.A.C. 4901:1-6-11(A)(1).



- Removes the italicized phrase from the policy objective under current law to "[e]nsure the availability of *adequate [BLES] or* voice service to citizens throughout the state";
- Removes the italicized phrases from the policy objective under current law to "[r]ely *primarily* on market forces, *where they exist*, to maintain reasonable service levels for telecommunications services at reasonable rates";
- Removes the italicized words in the policy objective under current law to "[n]ot *unduly* favor or advantage any provider and not *unduly* advantage providers of competing and functionally equivalent services."⁷

Applicability of provisions governing communications systems

The bill expands the scope of a provision of current law that applies to the construction and use of communications systems. Current law applies certain powers and restrictions to telephone or communications companies that construct or use communications systems for certain services "as public utility services." The bill removes the phrase "as public utility services." The effect of this change is that the powers and restrictions would apply to any company organized to transact a telephone or communications business, regardless of whether it is regulated as a public utility.⁸ Under continuing law, these powers and restrictions pertain to property use, repair and construction of facilities, and public rights of way.⁹

PUCO authority and jurisdiction

Jurisdiction over telephone company acquisitions or mergers

Domestic telephone or holding company acquisitions or mergers

The bill removes the requirement for PUCO approval for: (1) a person to acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company, and (2) a domestic telephone company to merge with another domestic telephone company. The bill also modifies the definition of "control" to remove reference to a domestic telephone company or a holding

⁷ R.C. 4927.02(A).

⁸ R.C. 4931.05.

⁹ R.C. 4931.02 to 4931.04, not in the bill.



company of a domestic telephone company, in order to conform to changes under the bill.¹⁰

Notice of FCC application for merger or transfer of control

Under the bill, a telephone company that files an application with the FCC seeking authority for a merger or transfer of control must file notice of the application with PUCO. However, prior approval of PUCO is not required in any case in which the FCC has approval authority, and PUCO cannot review or investigate the transaction. PUCO must adopt rules to specify the time and manner in which the company must file notice of the application.¹¹

Investigations of telephone companies

The bill permits PUCO to investigate or inspect the plant and facility of any telephone company, subject to the following limitations:

- To the extent of PUCO's jurisdiction over the company under state law governing telecommunications; and
- Only in response to a consumer complaint concerning BLES that implicates the plant or facility to be inspected.¹²

Under continuing law, PUCO may: (1) examine the books, records, contracts, documents, and papers of a telephone company for any purpose incidental to PUCO's authority, (2) compel the production of the books, records, contracts, documents, and papers, and (3) compel the attendance of witnesses to give evidence.¹³

Rulemaking

The bill requires PUCO to amend its rules, not later than 120 days following the effective date of the bill, to the extent necessary to bring them into conformity with the bill. The bill also requires PUCO to amend its rules governing Lifeline service to ensure consistency with the federal Lifeline program. Although state law governing Lifeline

¹⁰ R.C. 4905.402(A)(1), (B), and (C).

¹¹ R.C. 4905.402(F).

¹² R.C. 4927.19(B).

¹³ R.C. 4927.19(A).

service is not amended by the bill, it was amended by H.B. 49 of the 132nd General Assembly to be consistent with the federal Lifeline program.¹⁴

Exclusion from the treble damages requirement

The bill exempts telephone companies from the requirement that any public utility or railroad that does, or causes to be done, any act or thing prohibited by certain chapters of the Public Utilities Law,¹⁵ or declared to be unlawful, or omits to do any act or thing required by that law, or by order of PUCO, is liable to the person, firm, or corporation injured for treble damages.¹⁶

Emergency telephone system

Expanding state law to cover providers of 9-1-1 capabilities

The bill expands, for the purposes of the Emergency Telephone System Law, the definitions of "telephone company" and "enhanced wireline 9-1-1." These changes have the effect of including entities, not covered under current law, that provide 9-1-1 capabilities.

Under the bill, "telephone company" includes any covered 9-1-1 service provider as defined under federal law.¹⁷ Under federal law, "covered 9-1-1 service provider" means any entity that provides 9-1-1, Enhanced 9-1-1, or Next Generation 9-1-1 capabilities such as call routing, automatic location information, automatic number identification, or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority, or operates one or more central offices that directly serve a PSAP. "Covered 9-1-1 service provider" excludes any entity that constitutes a PSAP or governmental authority to the extent that it provides 9-1-1 capabilities, or offers the capability to originate 9-1-1 calls where another service provider delivers those calls and associated number or location information to the appropriate PSAP.¹⁸

The bill expands the definition of "enhanced wireline 9-1-1" to include a 9-1-1 system in which the wireline telephone network, in providing wireline 9-1-1, receives, develops, collects, or processes requests for emergency assistance and relays, transfers,

¹⁴ Section 3; R.C. 4927.13, not in the bill.

¹⁵ Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code.

¹⁶ R.C. 4905.61.

¹⁷ R.C. 128.01(W).

¹⁸ 47 C.F.R. 12.4(a)(4).



operates, maintains, or provides emergency notification services or system capabilities. Under current law, "enhanced wireline 9-1-1" means only a 9-1-1 system in which the wireline telephone network, in providing 9-1-1, automatically routes the call to emergency service providers that serve the location from which the call is made and immediately provides to personnel answering the 9-1-1 call information on the location and the telephone number from which the call is being made.¹⁹

Civil action immunity expansion

The bill expands an immunity provision in the Emergency Telephone System Law. Specifically, the bill excludes from liability, for damages in a civil action for injuries, death, or loss to persons or property from (1) activities or omissions in connection with the development, maintenance, or operation of a 9-1-1 system or (2) assisting a public utility, municipal utility, or state or local government in cases of public emergency, both of the following:

- Telephone companies and other installers, maintainers, and providers of services used for or with a 9-1-1 system and their respective officers, directors, employees, agents, suppliers, corporate parents, and affiliates; and
- Corporate parents and affiliates of telephone companies and other installers, maintainers, and providers of telecommunications equipment used on the premises of a PSAP.

Current law grants immunity to telephone companies and other installers, maintainers, and providers of telecommunications equipment used on the premises of a PSAP and their respective officers, directors, employees, agents, and suppliers. Under both current law and the bill, immunity does not apply in cases of willful or wanton misconduct.²⁰

Applicability of the Deceptive Trade Practices Law

The bill revises, for the purposes of the Deceptive Trade Practices Law, the definition of "telephone company" to mean a person that, in the normal course of business, offers a local telephone directory to customers or lists business names in a directory assistance database. Currently, the term is defined for purposes of this law to

¹⁹ R.C. 128.01(D).

²⁰ R.C. 128.01(Q) and 128.32(C).



mean any company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state, that is a public utility and provides BLES.²¹

Contractual and federal obligations

The bill states that nothing in the sections amended by the bill is to be construed to affect any existing contractual obligation or any right or obligation under federal law or rules.²²

COMMENT

The bill is unclear as to whether an ILEC must receive a competitiveness determination from the PUCO before it may increase BLES rates to comply with federal eligibility requirements for the Universal Service High-Cost program. This is because the bill requires PUCO to allow ILECs to increase BLES rates by any amount necessary to comply with those eligibility requirements.²³ But a separate provision in continuing law states that if PUCO has not made a determination that an ILEC's exchange area qualified for alternative regulation under PUCO rules as they existed on September 13, 2010, then the ILEC may not increase its BLES rates for that exchange area unless the ILEC receives a competitiveness determination from the PUCO.²⁴ These two provisions could be interpreted to conflict.

HISTORY

ACTION	DATE
Introduced	10-31-17

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²¹ R.C. 4165.01(K) and 4905.402(A)(4); R.C. 4905.03(A), not in the bill.

²² R.C. 4927.102.

²³ R.C. 4927.12(G).

²⁴ R.C. 4927.12(C)(3)(a).

