



Sub. S.B. 235
123rd General Assembly
(As Passed by the General Assembly)

Sens. Ray, Blessing, Johnson, Drake, Herington, Harris, Prentiss, Spada, Fingerhut, Wachtmann, White, Espy, Armbruster, Finan, McLin, Nein, Gardner

Reps. Schuler, Goodman, Olman, Britton, Sulzer, Hartnett, Stapleton, Barrett

Effective date: *

ACT SUMMARY

- Changes the definition of "basic local exchange service" as that term is used in the law providing for alternative regulation of public telecommunication services and in the law governing the scope of Public Utilities Commission authority to approve mergers involving telephone companies.

CONTENT AND OPERATION

In general, the act changes the definition of "basic local exchange service" under alternative telephone regulation law, and also under telephone company merger law which relies on the same definition. The changes made to the two laws are separately discussed in this analysis. The discussion of the changes to the alternative regulation law is preceded by background information concerning that statute and existing and proposed administrative implementation of the law.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

Alternative telephone regulation

Background

(secs. 4927.01 to 4927.04)

Pursuant to legislation first enacted in 1988, continuing Ohio law (Chapter 4927. of the Revised Code) provides for alternative regulation of public telecommunications services (see **COMMENT 1**). Such regulation is alternative to the traditional manner of regulating the services and rates of public utilities that is set forth elsewhere in Title 49, primarily in Chapters 4905. and 4909. of the Revised Code. Generally, authority granted to a telephone company under Chapter 4927. provides greater freedom from state regulation.

The alternative regulation law of Chapter 4927. provides two different alternative regulation frameworks in the case of any company having 15,000 or more access lines: one framework for *basic local exchange service* (sec. 4927.04(A) and (C)) and one for *all other public telecommunications services* (referred to in this analysis as non-basic services) (sec. 4927.03). A third regulatory framework applies to any public telecommunications service of a smaller company, having fewer than 15,000 access lines (sec. 4927.04(B) and (C)). Generally, the regulatory frameworks require consideration of a state telecommunications policy articulated in section 4927.02 and require that the granting of alternative regulation be in the public interest.

A major difference between the three frameworks is the nature of the alternative regulation that could be granted by the Public Utilities Commission (PUCO). In the case of any non-basic public telecommunications service of a larger company, the PUCO may exempt a company from compliance with any provision of Chapter 4905. or 4909. or any rule or order adopted under those chapters, or may establish alternative regulatory requirements to apply to the particular service and company. In the case of the basic local exchange service of a larger company or a non-basic service not otherwise alternatively regulated, the only alternative regulation that may be granted is a method of ratemaking that is alternative to the traditional rate-base, rate-of-return method. In the case of any public telecommunications service of a smaller company (including basic local exchange service), the PUCO may exempt the company from any provision of Chapter 4905. or 4909., except specified sections including sections that generally concern abandonment of service or facilities, minimum service standards, and adequacy of service.

Under the authority of Chapter 4927. of the Revised Code, the PUCO has issued orders that detail the three alternative frameworks, one order applicable to larger incumbent companies and an order for smaller companies. These orders are



in addition to other orders prescribing regulatory frameworks for telephone companies (see **COMMENT 2**).

The current Chapter 4927. order for the larger incumbent companies contains definitions of "basic local exchange service" and "non-basic service" for the purpose of determining the degree of pricing and regulatory freedom a company could have for any such service. As is the case with the statutory definition, the order does not define "basic local exchange service" in terms of specific service elements; rather it references the statutory definition and then identifies three categories of basic service, with general distinctions made based on whether a service is deemed essential to public safety or protection of privacy or involves monopoly access. The Chapter 4927. order for smaller companies refers to basic and non-basic service but does not specify definitions for those terms per se.

During 1999 and 2000, the PUCO revisited certain of its policies concerning telecommunications regulation. In particular, it authorized two proceedings to consider regulatory changes proposed by PUCO staff. (Both proceedings were pending at the time this final analysis was prepared.) One of the proceedings proposes revision of the regulatory requirements of Ohio certified telecommunications service providers, including, as the proposal describes, three tiers of regulated retail services, each with increasing levels of regulatory and market flexibility. The other proceeding proposes the terms and conditions of a generic "elective alternative regulation plan," described as an option available to any larger or smaller incumbent company that seeks alternative regulation but does not wish to pursue its own company-designed application. This alternative ratemaking is proposed to include the retail pricing framework of the first proceeding described above. (See **COMMENT 3**.)

Changes made by the act; definition of "basic local exchange service"

(sec. 4927.01)

The act redefines "basic local exchange service" for purposes of the regulatory frameworks of the alternative regulation law. The general effect of the act is to narrow what constitutes "basic local exchange service" and expand what constitutes "all other public telecommunications services" (non-basic services). Thus, as to alternative regulation, the act authorizes a prospective change in how different types of public telecommunications services could be provided and priced. The specific nature of the act's effects will depend upon the extent to which different companies in Ohio operate under alternative regulation and what the terms and conditions of that regulation are, including alternative regulation under any future revised policies adopted by the PUCO.

Former law and the act acknowledge two components of basic local exchange service: in effect, end user service and carrier service. The former statutory definition of "basic local exchange service" was

the end user and carrier access to and usage of telephone company-provided facilities that enable customers, over a local exchange telephone company network operated within a local service area, to originate or receive voice grade, data, or image communications and to access interexchange or other networks (sec. 4927.01(A)).

Under the act, the end user and carrier components are described separately, and the **carrier component** remains defined as "carrier access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks."

The **end user component** of basic local exchange service is changed as follows:

(1) The act refers to end user access to and usage of telephone company-provided *services*, rather than facilities;

(2) It removes references to basic service that enables a customer to originate or receive *data or image* communications, while retaining the reference to originating or receiving voice communications;

(3) It specifies that basic local exchange service for an end user will be service *over the primary line serving the customer's premises*;

(4) It specifies the *service elements* that constitute basic local exchange services: (a) local dial tone, (b) touch tone dialing, (c) access to and usage of available 9-1-1 services, (d) access to operator services and directory assistance, (e) provision of a telephone directory and a listing in that directory, (f) per call, caller identification blocking services, (g) access to telecommunications relay service, and (h) access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.



PUCO merger approval authority

(sec. 4905.402, not in the act)

Under continuing law, no person may acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling such a company unless the person obtains prior approval of the PUCO. For purposes of this prohibition, "telephone company" includes any person that provides "basic local exchange service" as defined under the alternative telephone regulation law of Chapter 4927.

The act changes the scope of the PUCO's authority to approve mergers, by virtue of the PUCO having jurisdiction to approve only those mergers involving telephone companies that provide basic local exchange service under the act's new definition of that service.

COMMENT

1. "Public telecommunications service" is a broadly defined statutory term (sec. 4927.01(D)). Generally, it means any transmission involved in originating and terminating a call in Ohio. The term specifically excludes a telecommunications system for the exclusive use of any entity and not for resale; the provision of terminal equipment used for originating or terminating a call; federally regulated broadcast transmissions by radio, TV, or satellite; or cable TV service.

2. In its preliminary proposal regarding an elective alternative regulation plan, PUCO staff describe the various regulatory frameworks under which incumbent local exchange companies (ILECS) operate, as follows:

Small ILECS may propose an alternative rate making system under the rules developed in Case No. 89-564-TP-COI. ILECS may operate under traditional rate-of-return regulation with certain flexibilities for competitive services granted through Case Nos. 89-944-TP-COI . . . and 86-1144-TP-COI . . . and the local service guidelines from Case No. 95-845-TP-COI. . . . ILECS may also choose to propose a company-specific alternative regulation plan pursuant to Revised Code 4927 and the Commission guidelines in Case No. 92-1149-TP-COI. . . . (Preliminary Proposal for an Elective Alternative Regulation Plan for ILECs," *In the Matter of the Commission ordered Investigation of an Elective Alternative Regulatory*



Framework for Incumbent Local Exchange Companies, Case No. 00-1532-TP-COI, at 3.)

3. The proceedings referred to in this final analysis are interrelated and, as of the preparation of the analysis, appear to be progressing on generally similar tracks in terms of the receipt and analysis of comments provided to the PUCO during the recent comment portion of the proceedings. The specific proceedings are Case No. 00-1532-TP-COI, *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*; and the combined proceedings for Case No. 99-998-TP-COI, *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines* and Case No. 99-563-TP-COI, *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*. The typical next step for such proceedings is for the PUCO itself to consider the related staff proposals in light of the comments received. It may eventually issue a final order prescribing policies it determines pursuant to its authority.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|-------------------------------|----------|---------------|
| Introduced | 01-06-00 | p. 1285 |
| Reported, S. Ways & Means | 12-05-00 | p. 2287 |
| Passed Senate (32-0) | 12-05-00 | pp. 2294-2295 |
| Reported, H. Public Utilities | 12-07-00 | p. 2465 |
| Passed House (78-8) | 12-07-00 | pp. 2465-2467 |

00-sb235.123/kl

