



**H.B. 613**

123rd General Assembly  
(As Introduced)

Rep. Cates

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**BILL SUMMARY**

- Establishes a statutory interconnection requirement for telephone companies that are public utilities.
- Establishes for local exchange carriers that are public utilities statutory duties concerning number portability; dialing parity; access to poles, ducts, conduits, and rights-of-way; reciprocal compensation; and resale of telecommunications services.
- Establishes for incumbent local exchange carriers that are public utilities statutory duties relating to interconnection, access to network elements, access to operations support functions, collocation of equipment, resale of telecommunications services, negotiation of agreements, public notice of certain changes regarding use of a carrier's network, and performance measurements.
- Provides specific authority for the Public Utilities Commission to enforce the bill's provisions.

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## CONTENT AND OPERATION

### Overview and background

The bill establishes a number of requirements and prohibitions with respect to telephone companies that are public utilities and also with respect to specific types of such telephone utilities, namely, local exchange carriers that are public utilities and incumbent local exchange carriers that are public utilities. The requirements and prohibitions generally pertain to issues related to telecommunications competition at the local level.

The bill expressly states that its requirements and prohibitions are in addition to any other duties or prohibitions established by law (sec. 4905.85(B)). The bill's requirements and prohibitions parallel requirements and prohibitions under the federal Telecommunications Act of 1996 (generally under 47 U.S.C.A. 251), with three exceptions noted in the analysis (see "Interconnection," "Access to operations support functions," and "Performance measurements" under "Duties of an incumbent local exchange carrier utility," below). The bill also provides specific authority for the Public Utilities Commission (PUCO) to enforce the bill's provisions pursuant to remedies that, as explained below, include forfeitures, limitations on alternative regulation, or, in a specified instance, structural separation of the utility.

The bill, thus, codifies a number of requirements established under federal law. It also codifies a number of requirements that parallel or are similar to requirements that the PUCO established as local competition guidelines in 1996 and has since modified (*In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Finding and Order, Case No. 95-845-TP-COI (June 12, 1996); Entry on Rehearing (February 20, 1997); and Entry (July 17, 1997)). This analysis contains parenthetical comments briefly describing requirements of the "845 guidelines"

that relate to the bill's provisions. According to the initial Finding and Order, the PUCO adopted the "845 guidelines" pursuant to authority it asserted under public policy expressed in existing alternative regulation law (sec. 4927.02), under the Telecommunications Act of 1996, and under an Ohio statute expressly vesting the PUCO with the authority to perform the acts of a state commission under the federal act (sec. 4905.04(B)).

The PUCO currently has a proceeding pending to review and possibly modify the 845 guidelines (*In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines*, Case No. 99-998-TP-COI). A deadline of February 1, 2000, was established for providing reply comments to comments submitted on provisions of the 845 guidelines that warrant clarification, modification, or amplification and on any new guideline proposals (Entry, January 14, 2000). No final order has yet been issued in that proceeding.

### **Interconnection duty of a telephone utility**

The bill requires a telephone company that is a public utility to interconnect directly or indirectly with the facilities and equipment of other telephone companies (sec. 4905.85(A)). (This general interconnection requirement is identical to one imposed under the 845 guidelines (Part III(A)(1)). Related issues like interconnection technical standards also are covered in the guidelines (Part XVI).

For purposes of the bill's general interconnection requirement and other provisions of the bill, "telephone company" is defined, under existing law unchanged by the bill, as any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, when engaged in the business of transmitting telephonic messages to, from, through, or in Ohio and as such is a common carrier (sec. 4905.03(A)(2)). "Public utility" includes, among other types of businesses, every corporation, company, copartnership, person, or association, their lessees, trustees, or receivers, statutorily described as a telephone company, and includes any public utility that operates its utility not for profit except for a public utility owned or operated by a municipal corporation (sec. 4905.02).

### **Duties of a local exchange carrier utility**

As described below, the bill establishes a number of duties for local exchange carrier utilities concerning number portability, dialing parity, access to poles and rights-of-way, reciprocal compensation, and resale of telecommunications services. For purposes of these and other provisions of the bill, a "local exchange carrier" is any person engaged in the provision of telephone exchange service or exchange access. The term excludes a person insofar as the

person is engaged in the provision of a commercial mobile service under specified federal law (47 U.S.C.A. 332(c)), except to the extent the Federal Communications Commission (FCC) finds that such service should be included in the definition of the term (sec. 4905.01(L)), referencing 47 U.S.C.A. 153). "Person" includes an individual, partnership, association, joint-stock company, trust, or corporation (47 U.S.C.A. 153). (The definition of "local exchange carrier" in the 845 guidelines contains the commercial mobile service exclusion and refers to facilities-based and nonfacilities-based, incumbent and new carriers providing basic local exchange service on a common carrier basis (Part I(A)).

Further, under the bill, "telephone exchange service" is service that is within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by the exchange service charge; or comparable service provided through a system of switches, transmission equipment, or other facilities by which a subscriber can originate and terminate a telecommunications service (sec. 4905.01(L), referencing 47 U.S.C.A. 153). "Exchange access" means the offering of access to telephone exchange services or facilities for the purpose of originating or terminating telephone toll services (sec. 4905.01(L)), referencing 47 U.S.C.A. 153; see also Part I(A) of the 845 guidelines). "Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (sec. 4905.01(L), referencing 47 U.S.C.A. 153). "Telecommunications" is the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received (47 U.S.C.A. 153).

### **Number portability**

The bill requires that, to the extent technically feasible, a local exchange carrier utility provide number portability in accordance with the requirements prescribed by the FCC under specified federal law (47 U.S.C.A. 251) (sec. 4905.851(A)(1)).

The bill defines "number portability" with reference to the federal law definition of that term: that is, the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another (sec. 4905.01(L), referencing 47 U.S.C.A. 153) (see **COMMENT**). (The definition in the 845 guidelines is similar except that it also refers to numbers within the same wire center and exchange access (Part I(A)). The guidelines address number portability (Part XIV).)

### **Dialing parity and specified access to certain services**

A local exchange carrier utility must provide dialing parity to competing providers of telecommunications services and must permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays (sec. 4905.851(A)(2)). The bill defines "dialing parity" with reference to its federal law definition: that is, "dialing parity" means that a person that is not a local exchange carrier affiliate is able to provide telecommunications services in such a manner that customers have the ability, without the use of any access code, to route automatically their telecommunications to the telecommunications services provider of the customer's designation from among two or more telecommunications services providers, including such local exchange carrier (sec. 4905.01(L), referencing 47 U.S.C.A. 153). (The 845 guidelines define "dialing parity" in a similar manner (Part I(A)) and establish a dialing parity requirement and a corresponding implementation schedule (Part X).)

### **Access to poles, ducts, conduits, and rights-of-way**

Under the bill, a local exchange carrier utility must afford to competing providers of telecommunications services access to the poles, ducts, conduits, and rights-of-way of the local exchange carrier utility, upon rates, terms, and conditions that are consistent with specified federal law (47 U.S.C.A. 224) (sec. 4905.851(A)(3)). (The 845 guidelines cover access to poles, ducts, conduits, and rights-of-way and such issues as pricing and coordination of construction activity (Part XII).)

### **Reciprocal compensation arrangements**

The bill requires a local exchange carrier utility to establish reciprocal compensation arrangements for the transport and termination of telecommunications (when more than one carrier is involved in completing a call) (sec. 4905.851(A)(4)). (The 845 guidelines contain compensation principles and procedures (Part IV).)

### **Resale**

Under the bill, a local exchange carrier utility cannot prohibit the resale of its telecommunications services or impose unreasonable or discriminatory conditions or limitations on such resale (sec. 4905.851(B)). (The 845 guidelines contain pricing standards for the resale of retail services (Part V) and conditions for local service resale (Part IX).)

### **Duties of an incumbent local exchange carrier utility**

The bill establishes duties for incumbent local exchange carrier utilities related to interconnection, access to network elements, access to operation support functions, collocation of equipment, resale, negotiation of agreements, public notice of changes regarding use of a carrier's network, and performance measurements. With reference to federal law, the bill defines "incumbent local exchange carrier" as the local exchange carrier that, with respect to an area, (1) provided telephone exchange service in the area on February 8, 1996, or (2) on that date was deemed to be a member of the Exchange Carrier Association pursuant to specified FCC regulations or that, on or after that date, is a person or entity that became a successor or assign of such member.

However, "incumbent local exchange carrier" excludes a rural telephone company that, pursuant to specified federal law (47 U.S.C.A. 251(f)(1)), is exempt from compliance with federal requirements (in 47 U.S.C.A. 251(c)) concerning an incumbent's duties regarding negotiation, interconnection, network access, resale, public notice, and collocation. (Sec. 4905.01(M), referencing 47 U.S.C.A. 251(h)(1).) "Rural telephone company" means a local exchange carrier operating entity to the extent that such entity (1) provides common carrier service to any local exchange carrier study area that does not include either all or part of an incorporated place of 10,000 inhabitants or more, based on census data or an incorporated or unincorporated territory, including an urbanized area, as defined by the 1993 census, (2) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines, (3) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines, or (4) has less than 15% of its access lines in communities of more than 50,000 on February 8, 1996 (sec. 4905.01(L), referencing 47 U.S.C.A. 153).

(The definition of "incumbent local exchange carrier" in the 845 guidelines (Part I(A)) is similar to that of the bill, although the guidelines provide rural local exchange carriers serving over 15,000 access lines with exemptions from certain duties that are applicable under the guidelines to incumbent carriers (Part II(A)(2)(c) and (d)) and authorizes suspensions or modifications to certain duties for rural carriers serving over 15,000 access lines that are not rural local exchange carriers under the guidelines (Part II(A)(2)(e)).

### **Interconnection**

Under the bill, an incumbent local exchange carrier utility must make available to any requesting telephone company in Ohio, not later than August 1, 2000, any interconnection arrangement that the incumbent utility or any of its subsidiaries or affiliates offers or provides in other states, as well as any

interconnection arrangement that any of the carrier utility's subsidiaries or affiliates has obtained in another state (sec. 4905.852(A)). Federal law requires that a local exchange carrier make available any interconnection, service, or network element upon the same terms and conditions as it has agreed to provide to another requesting telecommunications carrier under an agreement approved under specified federal law (47 U.S.C.A. 252(i)).

Additionally under the bill, an incumbent local exchange carrier utility must provide interconnection of its network with the facilities and equipment of a requesting telephone company, for the transmission and routing of telephone exchange service and exchange access (sec. 4905.852(C)). Interconnection must be provided at any technically feasible point with the carrier utility's network. It must be equal in quality to that provided by the carrier utility to itself or any subsidiary, affiliate, or other party to which the carrier utility provides such interconnection. Further, the interconnection must be provided on terms, rates, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement between the parties and in accordance with this portion of the bill and with specified federal law (47 U.S.C.A. 252). (Sec. 4905.852(C).)

(The 845 guidelines cover carrier interconnection obligations and interconnection standards, technologically feasible points of interconnection, standards for interconnection rates, terms, and conditions, standards for making a bona fide request, negotiation procedures, and other matters related to interconnection (Part III).)

### **Access to network elements**

The incumbent local exchange carrier utility must provide to any requesting telephone company for the purpose of providing a telecommunications service nondiscriminatory access to network elements of the incumbent on an unbundled basis. This access must be provided at any technically feasible point, upon rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of any agreement between the parties and in accordance with specified federal law (47 U.S.C.A. 251 and 252). Additionally, the unbundled network elements must be provided in a manner that allows the requesting telephone company to combine the elements to provide a telecommunications service.

"Network element" is defined under the bill, with reference to federal law, as a facility or equipment used in the provision of a telecommunications service. "Network element" includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases,

signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service. (Sec. 4905.01(L), referencing 47 U.S.C.A. 153.)

(The definition of "network element" is identical to the definition in the 845 guidelines (Part I(A)). The guidelines cover unbundling of network elements (Part VIII).)

### **Access to operations support functions**

The incumbent local exchange carrier utility must provide a requesting telephone company that is purchasing access to unbundled network elements with the preordering, ordering, provisioning, maintenance, repair, and billing functions of the incumbent local exchange carrier utility's operations support systems. By January 1, 2002, the incumbent carrier utility must provide the requesting telephone company with access to those systems at parity with the carrier's own access. Under the bill, this parity access requires the incumbent to provide the requesting telephone company with access to the same manual, computerized, and automated systems used by the carrier's service representatives, engineers, other personnel, or affiliates to provide retail telecommunications services, including advanced services. Additionally, this parity access must include access to associated business processes and up-to-date data maintained in such systems. (Sec. 4905.852(E).)

There are no parallel federal requirements for these provisions of the bill, but federal law does require the FCC to adopt regulations requiring an incumbent local exchange carrier to make available to any qualifying carrier as defined under federal law such public switched network infrastructure, technology, information, and telecommunications facilities and functions as would enable the qualifying carrier to provide telecommunications services or access to information services (47 U.S.C.A. 259).

### **Collocation**

The incumbent local exchange carrier utility must provide, at its premises and upon rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for collocation of equipment necessary for the interconnection or access to the carrier's unbundled network elements. Physical collocation must include caged, cageless, shared, and adjacent space collocation. The collocation may be virtual, rather than physical, only if the incumbent local exchange carrier utility demonstrates to the PUCO that physical collocation is not practical for technical reasons or because of space limitations. (Sec. 4905.852(F).) (Collocation requirements appear in those 845 guidelines that concern interconnection and pricing standards (Parts III and V).)

### **Resale**

The incumbent local exchange carrier utility must offer for resale at wholesale rates any retail telecommunications service that the incumbent provides to any subscriber that is not a telephone company. The incumbent cannot prohibit or impose unreasonable or discriminatory conditions or limitations on such resale, except that the PUCO, consistent with specified FCC regulations (under 47 U.S.C.A. 251), may prohibit a reseller, that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers, from offering the service to a different category of subscribers. (Sec. 4905.852(H).) (The 845 guidelines establish resale requirements for local exchange carriers and incumbent local exchange carriers (Part IX).)

### **Negotiation in good faith**

The incumbent local exchange carrier utility must negotiate in good faith, in accordance with specified federal law (47 U.S.C.A. 252), the particular terms and conditions of certain types of agreements. There also is a reciprocal requirement under the bill that a requesting telephone company negotiate in good faith the terms and conditions of any such agreements. These agreements consist of any agreement for the purpose of compliance with any duty described in "**Duties of a local exchange carrier utility**," above, and any agreement for compliance with the duty of an incumbent local exchange carrier utility as described in this portion of the analysis regarding interconnection, access to network elements, access to operations support, collocation, or resale. (Sec. 4905.852(B).)

(The 845 guidelines expressly require all telecommunications carriers to negotiate in good faith the terms and conditions of an interconnection agreement (Part III(A)(3).)

### **Public notice of changes**

The incumbent local exchange carrier utility must provide reasonable public notice of any change in information necessary for the transmission or routing of telecommunications services using the incumbent's facilities or networks, as well as reasonable public notice of any other change that would affect or affects the interoperability of those facilities and networks (sec. 4905.852(G)).

### **Performance measurements**

For the express purposes of providing a means of adequately measuring the quality of service that an incumbent local exchange carrier utility provides to competing local exchange carriers and ensuring that the quality of service is at least equal to the service the incumbent provides to itself or to any of its

subsidiaries or affiliates, the incumbent local exchange carrier utility must (1) fully implement the performance measurements adopted by order of the PUCO in a specified case (Case No. 98-1082-TP-AMT), and (2) meet the benchmark levels of service prescribed for all such measurements. (As of the date of this analysis, an order adopting performance measurements pursuant to that case is anticipated but has not actually occurred.)

Under the bill, the performance measurements and corresponding benchmark levels of service will apply to the incumbent local exchange carrier that is the subject of the case (SBC/Ameritech) beginning on the effective date specified in the order, but not later than August 1, 2000. They will apply to every other incumbent local exchange carrier utility beginning on August 1, 2000. (Sec. 4905.852(I)(1).)

The bill authorizes the PUCO to revise by order the performance measurements periodically and, as it considers necessary, to prescribe different reporting or other requirements for different incumbent local exchange carrier utilities for the purpose of monitoring carrier implementation of the performance measurements and achievement of benchmark levels of service (sec. 4905.852(I)(2)).

There is no corresponding requirement under federal law for performance measurements. (Under the 845 guidelines, local exchange carriers that have achieved interconnection must justify denials and delays in fulfilling bona fide interconnection requests and all local exchange carriers must file with the PUCO annual telecommunications performance measurement data (Part XI(A) and (B)).)

### **PUCO enforcement authority**

The bill states that the PUCO has jurisdiction under existing law regarding complaints (sec. 4905.26) to determine, upon complaint of any person or PUCO initiative, whether an incumbent local exchange carrier utility has violated or failed to comply with any provision of the bill (sec. 4905.853(A)). (The 845 guidelines provide that carrier-to-carrier complaints regarding compliance may be addressed pursuant to a filing under that existing complaint law, with a streamlined procedure in the case of complaints involving interconnection arrangements (Part XVIII(C)). Under existing law, the PUCO may order corrective action as necessary to address a complaint and must assess a forfeiture of not less than \$100 nor more than \$5,000 for each day of any failure to comply with such order (sec. 4905.381).) For specified violations or failures to comply under the bill, the bill provides all of the following remedies, in addition to any other remedy provided by law and after reasonable notice and opportunity for

hearing in accordance with existing complaint law (sec. 4905.853(B)(1) and (2), (C), and (D)(2)):

### **Forfeitures**

Under the bill, the PUCO generally may assess upon an incumbent local exchange carrier utility a forfeiture of up to \$1 million for any violation or failure to comply with any of the bill's requirements or prohibitions specifically applicable to any such incumbent utility (see "**Duties of an incumbent local exchange carrier utility**," above). Under the bill, each day's continuance of the failure is a separate offense. (Sec. 4905.853(B)(1).) However, with respect to a failure to comply with the bill's requirement to fully implement performance measurements, the bill instead requires the PUCO to assess upon an incumbent local exchange carrier utility a forfeiture in the amount of \$30 million for that failure (sec. 4905.853(B)(2)).

### **Structural separation**

The PUCO must issue an order requiring structural separation of an incumbent local exchange carrier utility if the PUCO determines under existing complaint law that the carrier has violated or failed to comply on or after January 1, 2002, with any provision of the bill (sec. 4905.853(C)). "Structural separation" is defined under the bill to mean the separation of an incumbent local exchange carrier's network element facilities, services, and businesses from its retail telecommunications services, into an independent, publicly owned company (sec. 4905.01(N)).

### **Limitations on alternative regulation**

The bill prohibits the PUCO from approving an exemption, alternative regulatory requirement, alternative method of establishing rates and charges, or plan of alternative regulation authorized under existing alternative regulation law (sec. 4927.03 or 4927.04) for any incumbent local exchange carrier utility that the PUCO determines has violated or failed to comply with any provision of the bill (sec. 4905.853(D)(1)).

If the PUCO determines that an incumbent local exchange carrier utility that already operates under such alternative regulation has violated or failed to comply with any provision of the bill, the PUCO immediately must commence a rate proceeding to impose upon the carrier rate of return regulation under existing law (Chapters 4905. and 4909.). In that proceeding, the PUCO must issue an order both providing for that regulation and terminating the alternative regulation of the carrier utility. (Sec. 4905.853(D)(2)).

The bill additionally prohibits the PUCO from approving alternative regulation under existing law on or after the bill's effective date that would remove a telephone company's duty to comply with the bill or would authorize a telephone company's noncompliance (sec. 4905.853 (D)(3)).

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## COMMENT

The division references in this analysis to specific provisions of section 4905.01 of the Revised Code are division references to the version of the section that appears in Section 1 of the bill. The bill, in Section 2, also amends, in an identical manner with the exception of the letters assigned to division references, a future version of section 4905.01 that will take effect as provided under Am. Sub. S.B. 3 of the 123rd General Assembly, an act pertaining to electric restructuring.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-21-00	p. 1699

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