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Bill Analysis
Legislative Service Commission

Sub. S.B. 235*
123rd General Assembly
(As Reported by S. Ways & Means)

Sen. Ray

BILL 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 PUCO authority to approve mergers involving telephone companies.

CONTENT AND OPERATION

PUCO alternative regulation for certain telecommunication services

Background

(secs. 4927.01 to 4927.04)

Pursuant to legislation first enacted in 1988, Ohio law (Chapter 4927. of the Revised Code) provides for alternative regulation of public telecommunications service. Generally, such regulation is alternative to the traditional earnings and rate-base, rate-of-return 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. would provide 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* (sec. 4927.03). A third regulatory framework applies to any public telecommunications service of a

* *This analysis was prepared before the report of the Senate Ways & Means Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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 R.C. 4927.02 and require that the granting of alternative regulation be in the public interest.

The statutory framework that applies to basic local exchange service for larger companies contemplates that alternative regulation may be granted upon the initiative of the Public Utilities Commission (PUCO) or upon an application filed by a company for a rate change under existing rate-making law. The framework that applies to any other public telecommunications service provides that alternative regulation may be granted under the PUCO's initiative or upon an application by one or more companies concerning one or more services. The regulatory framework that applies to smaller companies contemplates alternative regulation only upon application of the company.

A major difference between the three frameworks is the nature of the alternative regulation that could be granted. In the case of the basic local exchange service of a larger company, the only alternative regulation that may be granted is a method of rate-making that is alternative to the rate-base, rate-of-return method. In the case of any other 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 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 generally concerning abandonment of service or facilities, minimum service standards, and adequacy of service.

To exempt a **public telecommunications service** from regulation or establish alternative regulatory requirements for it, the PUCO must find that doing so is in the public interest and either (1) the telephone company is subject to competition with respect to public telecommunications service, or (2) the customers of the service have reasonably available alternatives. The PUCO must consider a list of statutory factors in determining whether the conditions in (1) or (2) exist, and give notice and afford the public and any affected telephone company a period for comment. The PUCO may hold a hearing on the exemption from regulation or alternative regulation if it considers one necessary. It retains jurisdiction over every telephone company providing a public telecommunications service that has received an exemption or for which alternative regulatory requirements have been established.

The process for setting alternative rates for **basic local exchange service** is not as involved as for obtaining an exemption from the Ohio public utility law or

establishing alternative regulation of a public telecommunications service. The PUCO only must find that the use of the alternative method of establishing rates and charges is in the public interest, and the telephone company consents, where the alternative method is proposed by the PUCO. Any person may file a request for hearing on the application, but it must appear to the PUCO that the request sets forth reasonable grounds for holding a hearing before one is scheduled.

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

(sec. 4927.01)

The bill modifies the definition of "basic local exchange service," as that term is used in the law providing for alternative regulation of public telecommunications services, with the effect of changing the nature of the alternative regulation that can be granted for a particular service.

Both continuing law and the bill acknowledge two types of basic local exchange service: end user service and carrier service. The bill does not appear to affect that component of the definition of basic local exchange service pertaining to carriers, which is 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 bill does change the end user component of basic local exchange service, as follows:

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

(2) It removes references to enabling 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.

At this point, it is difficult to analyze the full effect of the bill's changes to the definition of "basic local exchange service," due to recent PUCO proposals involving basic local exchange rates for incumbent local exchange carriers (see **COMMENT**).

Effect of amending "basic local exchange service" on PUCO's merger approval authority

(sec. 4905.402, not in the bill)

Under continuing law, no person may acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling it 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." The bill's modification of the services categorized as "basic local exchange service" 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 bill's new definition of that service.

COMMENT

The PUCO is in the process of promulgating an elective alternative regulation plan for incumbent local exchange carriers in *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). The PUCO proposed the elective plan to eliminate the time and cost problems associated with alternative regulation cases under existing law. The plan is intended for any incumbent local exchange carrier that is seeking to have alternative ratemaking regulation, but does not wish to pursue an individual company-specific application for alternative regulatory treatment under existing law. The elective plan will affect basic local exchange rates, but at this time, the ratemaking options have not been finalized. The nature of the bill's effects on this plan will depend on PUCO's implementation of the bill and the future adoption of any final orders or rules on alternative regulation, and on any companies being approved for alternative regulation under the bill and PUCO's final elective plan.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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