Mary S. Connor *Legislative Service Commission*

H.B. 418

124th General Assembly
(As Introduced)

Rep. Schuring

BILL SUMMARY

- Prohibits a telephone utility from beginning or continuing to operate under alternative regulation if the Public Utilities Commission determines that the utility is not in compliance with minimum standards of telephone service prescribed by the Commission pursuant to continuing authority.

CONTENT AND OPERATION

OVERVIEW

The bill establishes compliance with minimum standards for telephone service as a condition for a telephone utility to operate under alternative telephone regulation. It thus expressly joins two aspects of the statutory regulation of telephone utilities: service adequacy as evidenced by a utility's compliance with minimum service standards, and alternative regulation (broadly, regulation in a manner other than that generally authorized for public utilities under statute). Following is background information on current law concerning telephone service standards, service adequacy, and PUCO enforcement authority; background on current law and practice regarding the alternative regulation of telephone companies; and an explanation of the bill's provisions.

BACKGROUND

Background regarding service standards and related enforcement measures

The PUCO has express authority to adopt minimum service standards for telephone service (sec. 4905.231) and has exercised that authority through the adoption of rules (Chapter 4901:1-5, Ohio Administrative Code). It typically enforces a telephone utility's compliance with those standards or the adequacy of a telephone utility's service through a complaint proceeding initiated either by the PUCO itself or by any person under complaint law. Under existing law

unchanged by the bill, the PUCO may assess a forfeiture of up to $1,000 per day per violation of the minimum standards by a telephone utility (sec. 4905.54), or it may direct the Attorney General to obtain a mandamus order, injunction, or other appropriate civil remedy (sec. 4905.60).

In addition to those enforcement measures, the PUCO, regarding any finding by the PUCO of inadequate service by a telephone utility, must prescribe by order the service, facilities, and practices that the utility must provide to address such a deficiency. The PUCO may assess a forfeiture of not less than $100 or more than $5,000 per day per violation of any such prescriptive order (sec. 4905.381).

Further, under continuing public utility law, a telephone utility cannot declare any cash, stock, bond, or scrip dividend or distribution or divide the proceeds of a stock, bond, or scrip sale if the utility is in violation of a PUCO order or has been found to provide inadequate service, unless the PUCO first determines that the dividend or distribution will not postpone compliance with the order or affect the adequacy of service or unless the utility sets aside in a special reserve fund the amount of the proposed dividend or distribution, to be expended only with PUCO consent (sec. 4905.46).

Background on alternative regulation

Continuing public utility law provides for "traditional" state regulation of public utilities and their provision of utility service, including telephone service, through PUCO oversight and supervision of various aspects of utility operation and provision of service. Beginning in 1989, statutory authority was granted providing for alternative regulation of telephone companies and telephone service pursuant to PUCO approval. Continuing law specifies the allowable nature of alternative regulation: (1) for any service other than basic local exchange service, such alternative regulation may be in the form of a specified exemption for a particular service or telephone utility from otherwise requisite PUCO regulation or the prescription of an alternative regulatory requirement for the service or utility, or (2) for any service not so granted an exemption or alternative regulatory requirement or for basic local exchange service, such alternative regulation may consist of rate setting in a manner other than setting rates based upon the revenues the utility requires to cover its operating costs and the amount of its plant investment and earn a fair and reasonable return on that investment.[1]

---

[1] *"Basic local exchange service" means (1) end user access to and usage of telephone company-provided services enabling a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area and consisting of local dial tone, touch tone, 9-1-1 service, operator service and*

The PUCO may grant alternative regulation to a telephone utility upon the PUCO's own initiative or the application of one or more utilities. Generally, the terms and conditions of alternative regulation are utility-specific (see **COMMENT**). (Secs. 4927.03 and 4927.04.) Recently, however, the PUCO adopted rules prescribing a generic alternative regulation option for incumbent local telephone utilities. The generic option authorizes any incumbent telephone utility to elect to be regulated under the option's uniform terms and conditions. (*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, Opinion and Order (December 6, 2001).)

Under existing statutes unchanged by the bill, standards of approval for alternative regulation are as follows:

(1) To approve alternative regulation for a larger telephone utility for any telecommunications service except basic local exchange service, the PUCO must find that the regulation is in the public interest and must find, after considering specified factors, that the telephone utility is subject to competition with respect to the service or that the customers of the service have reasonably available alternatives.[2] Once the alternative regulation is approved, the PUCO is prohibited from abrogating or modifying an order granting the alternative regulation more than eight years after the date the order was entered upon the PUCO's journal, unless the telephone utility consents. (Sec. 4927.03.)

(2) The standards of approval for a larger telephone utility concerning basic local exchange service or any telecommunications service for which the PUCO has not granted an exemption or alternative regulatory requirement are that the alternative regulation is in the public interest and, in instances where the

---

directory assistance, telephone directory listing and provision of a directory, per call Caller ID blocking, telecommunications relay service, and toll and interexchange access and access to networks of other companies, and (2) carrier access to and usage of telephone-company provided facilities enabling end users 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 (sec. 4927.01(A)).

[2] *The actual statutory term is "public telecommunications service," defined broadly to mean any transmission by a telephone company, but expressly excluding (1) any telecommunications system for the sole use of the entity that constructed it or of its parent, subsidiary, or an affiliated entity and not for resale, (2) the provision of terminal equipment, (3) broadcast transmission by radio, TV, or satellite broadcast stations regulated by the federal government, or (4) cable TV service (sec. 4927.01(D)).*

alternative regulation is proposed by the PUCO, the utility consents (sec. 4927.04(A)).

(3) For a small telephone utility serving fewer than 15,000 access lines, the requisite standard for approval is that the alternative regulation is in the public interest (sec. 4927.04(B)).

According to the PUCO order regarding the generic alternative regulation option, a company must make a filing with the PUCO electing the generic regulation, and the election is automatically approved on the 46th day after filing, unless otherwise suspended by the PUCO. (Rule No. 4901:1-4-02(A), Ohio Administrative Code.) PUCO rules governing the generic option do not specify any standards pursuant to which such a suspension would occur. But, in a discussion portion of the PUCO order establishing the generic option and specifically concerning the question of whether authority to initially elect the generic option should be dependent on a utility's compliance with minimum telephone service standards, the order states that "it would not be inappropriate to consider a [utility's] service quality compliance in reviewing an electing [utility's] notice seeking to participate in [the generic] alternative regulation plan" (*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, Opinion and Order (December 6, 2001), at 22 and 23).

PUCO rules governing the *generic* alternative regulation option state that, once generic regulation is in effect for a utility, the PUCO will give a noncomplying utility notice and a reasonable time to comply with the terms of the generic option, and that the PUCO will not revoke generic regulatory authority unless the utility "in fact has failed to materially comply with the terms of the [option] and in fact has failed to come into compliance within such reasonable period of time." Prior to a revocation of authority, the PUCO will "take into consideration consequences of such [revocatory] action on the [utility] as well as the impact on its customers." (Rule No. 4901:1-4-02 (D), Ohio Administrative Code.)

THE BILL

H.B. 418's denial of alternative regulation for a violation of service standards

The bill generally denies alternative telephone regulation to any telephone utility that does not comply with PUCO-prescribed minimum telephone service standards. Such "alternative telephone regulation" includes not only the alternative regulation authority provided under existing statutes, but also any alternative regulation prescribed by rule or order adopted or issued by the PUCO

under such authority as may be conferred by continuing public utility law (specifically, Chapter 4905., 4909., or 4927.) (sec. 4927.05(A)).

Prohibition against continuing to operate under alternative regulation

The bill prohibits a telephone utility operating on or after the bill's effective date under alternative telephone regulation that was authorized or elected prior to or on or after that date from *continuing to so operate*, if the PUCO, upon a complaint filed or initiated under existing complaint law and by order, determines that the utility is not in compliance with the minimum telephone service standards (sec. 4905.26). The bill requires that the PUCO order provide or, if issued prior to the bill's effective date, that the order be modified to provide, a schedule and such terms and conditions as the PUCO considers reasonably necessary to effect the company's prompt and orderly transition to traditional regulation under public utility law. The bill authorizes this rescission of alternative regulation notwithstanding any provision of law to the contrary, which includes a provision of existing law prohibiting PUCO abrogation or modification of an alternative regulation order after eight years unless the utility consents. (Sec. 4927.05(B)(2).)

Prohibition against beginning to operate under alternative regulation

The bill additionally prohibits a telephone company that is a public utility under public utility law from *beginning to operate* under alternative telephone regulation on or after the bill's effective date unless the PUCO by order first determines that the company is in compliance with any PUCO-prescribed minimum standards of telephone service. This determination would be in addition to any other standards for approval of an alternative regulation plan under existing law and to any finding or condition otherwise required by law to operate under alternative telephone regulation (see the explanation of those standards in "***Background on alternative regulation***," above). (Sec. 4927.05(B)(1).)

COMMENT

Currently, two Ohio telephone utilities operate under PUCO-approved alternative regulation: Ameritech and Cincinnati Bell. The alternative regulation plan under which each operates is a utility-specific plan developed for the individual company. Ameritech's alternative regulation plan is scheduled to expire in January, 2003, and Cincinnati Bell's is scheduled to expire in June, 2002. In July, 2000, the PUCO found that Ameritech provided inadequate telephone service and was in violation of the PUCO's prescribed minimum telephone service standards, which the PUCO described as the minimum requirements for furnishing adequate telephone service. Pursuant to its authority under existing law, the PUCO assessed forfeitures against Ameritech (although it deferred

implementation of most of the forfeitures) and also established certain remedial practices for Ameritech to address that noncompliance, and it continues to monitor Ameritech's efforts to achieve compliance. (*In the Matter of the Commission Ordered Investigation of Ameritech Ohio Relative to Its Compliance with Certain Provisions of the Minimum Telephone Service Standards Set Forth in Chapter 4905:1-5, Ohio Administrative Code*, Case No. 99-938-TP-COI, Opinion and Order (July 20, 2000); and subsequent orders in the case.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-24-01	p. 983

H0418-I.124/jc