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**BILL SUMMARY**

- Prohibits the Public Utilities Commission (PUCO) from establishing any requirements or pricing for the unbundling of network elements, for the resale of telecommunications services, or for network interconnection that exceed or are inconsistent with or prohibited by federal law, and requires such PUCO pricing to comply with federal law.
- Prohibits the PUCO from exercising any jurisdiction over advanced services or internet protocol-enabled service that is prohibited by, or exceeds or is inconsistent with its jurisdiction under, federal law.
- Makes changes to Ohio's Alternative Regulation ("Alt Reg") statute, in part to modify a state policy objective concerning just and reasonable rates for public telecommunications services and to add three objectives generally pertaining to the scope of PUCO regulation and the nondiscriminatory treatment of service providers where competing and functionally equivalent services are involved and to the continuation of lifeline assistance.
- Modifies an Alt Reg law provision authorizing an alternative regulation option for small telephone companies regarding any public telecommunications service so that the option is available specifically to small companies--redefined as having fewer than 50,000 access lines--that are incumbent local exchange companies.
- Changes a current alternative regulation option that allows any company to apply to the PUCO for approval of alternative regulation for any public

telecommunications service except basic local exchange service so that the option will be available for basic local exchange service as well.

- For that revised option, prohibits the PUCO from abrogating or modifying an order approving the revised option after five years, in contrast to the eight years in which the PUCO currently can take such action with respect to the option of existing law; modifies the list of eligible statutory exemptions that a company may seek under the option for basic local exchange service; and requires that, if the option will involve basic local exchange service, PUCO approval is contingent on the PUCO additionally finding that there are no barriers to entry.
- Given that the bill authorizes the revised option, may indirectly empower the PUCO to adopt generic, "off-the-shelf" alternative regulation options for basic local exchange service.
- Requires initial Alt Reg rules to be adopted within 120 days and PUCO consideration of an off-the-shelf option unique to small companies.

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## CONTENT AND OPERATION

### *PUCO as a "state commission"*

(R.C. 4905.04)

Current law states that the PUCO's regulatory authority includes the authority to perform the acts of a state commission under the federal Telecommunications Act of 1996. The bill replaces the reference to that act with a reference to "federal law"<sup>1</sup> and, in effect, defines "state commission" as the agency

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<sup>1</sup> *All of the bill's references to "federal law" expressly include federal regulations.*

having jurisdiction under Ohio law over the intrastate operations of common carriers of wire or radio communications (excluding radio broadcasters) (47 U.S.C. 153(10) and (41)). The bill limits the regulatory authority of the PUCO in the areas of telecommunications network services, advanced services, and internet protocol-enabled service, as follows.

**Network services**

(R.C. 4905.041)

The bill prohibits the PUCO from establishing any requirements or pricing for the unbundling of network elements, for the resale of telecommunications services, or for network interconnection that exceed or are inconsistent with or prohibited by federal law. The bill further requires such PUCO pricing to comply with federal law.

An interconnection agreement is an agreement between a facilities-based telephone service provider and another provider under which the other provider may use one or more federally specified, physical or functional elements of the facilities-based provider's telephone network (called "unbundled network elements"<sup>2</sup>) in order to provide local phone service. Federal regulations<sup>3</sup> concerning interconnection include those requiring every telecommunication service provider<sup>4</sup> to interconnect with the facilities and equipment of other providers (47 C.F.R. 51.100(a)) and requiring all providers to negotiate interconnection agreements in good faith (47 C.F.R. 51.301). Access to the

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<sup>2</sup> Under 47 C.F.R. 51.5, a network element is a facility or equipment used in the provision of a telecommunications service and includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including but not limited to, 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.

<sup>3</sup> The primary statutory basis for the regulations is 47 U.S.C.A. 251 and 252. Certain of the regulations adopted by the Federal Communications Commission have been subject to various court challenges primarily on the basis of whether the Commission properly exercised its statutory authority, with the effect that some of the regulations were modified after their original adoption.

<sup>4</sup> The federal term is "telecommunications carrier," which is defined to exclude aggregators of telephone service (47 C.F.R. 51.5).

unbundled network elements of an incumbent local exchange company<sup>5</sup> has to be nondiscriminatory (51 C.F.R. 51.307). The wholesale prices for that access are regulated (cost-based, with a reasonable profit), and must be just, reasonable, and nondiscriminatory (47 C.F.R. 51.321).

Federal regulations establish duties and responsibilities for state commissions, like the PUCO, to make various decisions concerning interconnection on a case-by-case basis. That authority includes setting prices for access to the unbundled network elements subject to standards specified in federal regulations (47 C.F.R. 51.501 to 51.517). The regulations detail use of total long-run incremental cost as the cost basis for prices, but allow a state commission to prescribe another basis (47 C.F.R. 51.503(b)).

Federal regulations also require a local exchange company to make its telecommunications services available for resale to other providers (except aggregators) on terms and conditions that are reasonable and nondiscriminatory (47 C.F.R. 51.603). State commissions are responsible for determining those wholesale rates subject to federal standards (47 C.F.R. 51.607).

State commissions also may assume responsibility under federal regulations for mediating any differences when asked by a party to a negotiation of an interconnection agreement, or to act as arbitrator upon petition. State approval of interconnection agreements are subject to federal statutory standards (47 U.S.C.A. 252(e)). Federal statutes preserve a state's authority to establish or enforce state requirements in its review of an agreement, including company compliance with intrastate telecommunications service quality requirements (47 U.S.C.A. 252(e)(3)).

The PUCO adopted final versions of new, comprehensive sets of competitive, wholesale and retail local service rules in 2002 and 2003.<sup>6</sup> A PUCO website shows a sample resale tariff and provides information on actual, negotiated and arbitrated agreements.<sup>7</sup>

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<sup>5</sup> Basically, this term refers to any local exchange company, or its successor, that provided exchange service on February 8, 1996 (the effective date of the federal Telecommunications Act of 1996) (47 C.F.R. 51.5).

<sup>6</sup> In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines, Case No. 99-998-TP-COI, and In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code, Case. No. 99-563-TP-COI, Opinion and Order (Dec. 6, 2001); and Entry (Apr. 1, 2003).

<sup>7</sup> See <[http://www.puco.ohio.gov/Puco/IndustryTopics/Topic.cfm?doc\\_id=200](http://www.puco.ohio.gov/Puco/IndustryTopics/Topic.cfm?doc_id=200)>.

*Advanced services and internet protocol-enabled services*

(R.C. 4905.042)

The bill prohibits the PUCO from exercising any jurisdiction over advanced services or internet protocol-enabled service that is prohibited by, or exceeds or is inconsistent with its jurisdiction under, federal law. Under the bill, "advanced services" and "internet protocol-enabled service" are those services as defined by federal law. A definition of "advanced services" currently appears in federal, *network interconnection* regulations: "advanced services" means high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology (47 C.F.R. 51.5). Currently, there is no general, federal definition of "internet protocol-enabled service." The Federal Communications Commission (FCC) on a case-by-case basis has recognized specific offerings as Voice over Internet Protocol Service (VoIP)<sup>8</sup> and so "defined" those particular services, and also has a pending proceeding in which a definition of internet protocol service may be issued (see below).

Current regulatory issues make the practical effects of the bill's limitation on PUCO regulation of advanced services and internet-protocol-enabled service uncertain, in part, because of ongoing issues of federal versus state authority and issues of what constitutes a telecommunications service for purposes of regulation. Existing Ohio statute specifies that a telephone company is any person engaged in the business of transmitting telephonic messages to, from, through, or in Ohio (R.C. 4905.03(A)(2)). ("Telephonic messages" is not defined in statute.) Ohio law authorizes the PUCO to regulate telephone companies that are "public utilities."<sup>9</sup>

The PUCO has acted in its regulatory capacity with respect to advanced services and IP service in various ways. One example is the PUCO's prescription of a generic, voluntary alternative regulation option that requires electing

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<sup>8</sup> *Voice over Internet Protocol (VoIP) service allows a person to make telephone calls using a computer network, over a data network like the internet. VoIP converts the voice signal from the person's telephone into a digital signal that travels over the internet, and then converts it back at the other end so the person can speak to anyone with a regular phone number. When placing a VoIP call using a phone with an adapter, the person will hear a dial tone and will dial as usual. VoIP also may allow a person to make a call directly from a computer using a conventional telephone or a microphone. Source: the Federal Communications Commission, <<http://www.fcc.gov.voip>>.*

<sup>9</sup> *While "public utility" is defined in R.C. 4905.02, the question of whether a particular company is a public utility is a question of fact and law.*

companies to provide certain advanced services in Ohio (see "*Incumbent company/nonbasic option*," later in this analysis). The PUCO has considered information services in the context of contracts or affiliate arrangements for which its approval has been sought.

Further as to IP service, the PUCO initiated a proceeding on April 9, 2003,<sup>10</sup> regarding

how telecommunications services with an Internet Protocol and/or voice over the Internet component are being provided in Ohio....The threshold legal issue is whether a company providing VoIP services is "transmitting telephonic messages" for purposes of

public utility law and PUCO authority.<sup>11</sup> The proceeding currently is well into the comment phase.

The matter of PUCO authority over IP services was discussed by two applicants for a PUCO rehearing of its decision in a proceeding<sup>12</sup> in which it declined to certificate a company to provide local exchange and interexchange voice services using VoIP.<sup>13</sup> One of those applicants has filed an appeal of the

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<sup>10</sup> *In the Matter of the Commission's Investigation of Voice Services Using Internet Protocol, Case No. 03-950-TP-COI.*

<sup>11</sup> *Id.*, Entry (April 17, 2003).

<sup>12</sup> *In the Matter of the Application of Time Warner Cable Information Services, Ohio, LLC to Offer Local and Exchange Access Service as a Competing Service Provider, Case No. 03-2229-TP-ACE.* In a December 17, 2003, Entry, the PUCO notes that the company, in filing for certification, did not concede that the PUCO has jurisdiction over VoIP and reserved the right to argue that the proposed VoIP services are not otherwise subject to federal or state regulation. While the PUCO declined to grant the certification, it authorized the company to provide the services, reasoning that it would be unfair to penalize the company for taking affirmative action to notify the PUCO of its plans via the filing and for making a good faith effort to comply with the PUCO's competitive retail services rules. Notably, however, the PUCO left the case open pending the resolution in the current IP proceeding of the issue of PUCO jurisdiction and ruled that any decisions in that proceeding would apply to the company. (At 2 and 3.)

<sup>13</sup> See *Time Warner, Application for a Rehearing of Cincinnati Bell Telephone Company* (Jan. 16, 2004), at 1-6; and *SBC Ohio's Application for Rehearing* (Jan. 16, 2004), at 3, footnote 2; and at 6.

PUCO decision with the Ohio Supreme Court, although the substance of the appeal has not yet been articulated.<sup>14</sup>

Further, in January 2005, the State of Ohio filed an appeal, yet to be decided, in the Sixth U.S. Circuit Court reportedly challenging a November 2004 decision of the Federal Communications Commission (FCC). In that decision the FCC preempted a Minnesota Public Utilities Commission order applying its traditional telephone company regulations to an IP service, concluding that the service could not be separated into interstate and intrastate communications for compliance with state requirements without negating valid federal policies and rules. The FCC further declared that state regulation of similar services must yield to important federal objectives, and state regulation over VoIP services provided by any entity is preempted.<sup>15</sup> The substance of the appeal to the federal court has not yet been articulated. California, New York, and Minnesota also have filed appeals of the November FCC order in their respective states.

The November FCC decision followed on the heels of similar FCC decisions, such as one in February 2004 in which the FCC found that pulver.com, an internet application that offers broadband users an option of direct communication called Free World Dialup, is not a "telecommunications service" but an unregulated information service subject to FCC jurisdiction. Further, supplemented by considerable analysis of FCC and state authority over information services, the February decision concludes that state regulation of the type of service provided by pulver.com would conflict with the FCC policy of nonregulation, which the FCC asserts is in keeping with federal statutes.<sup>16</sup>

Additionally on the federal level, the FCC has a pending proceeding on IP services,<sup>17</sup> reportedly to resolve regulatory matters such as universal service,

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<sup>14</sup> *Cincinnati Bell v. PUCO*, Supreme Court 04-0925, filed April 5, 2005.

<sup>15</sup> *In the Matter of Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, FCC 04-267, Memorandum and Order (rel. Nov. 12, 2004), at IV 46.

<sup>16</sup> *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, FCC 04-27, Memorandum Opinion and Order (rel. Feb. 19, 2004).

<sup>17</sup> *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

intercarrier compensation, and 9-1-1 obligations and to determine the states' role in those matters.<sup>18</sup>

### **Alternative telephone regulation**

(R.C. 4927.02, 4927.03, and 4927.04)

#### **Background**

The statute providing for the alternative regulation of public utility telephone companies and public telecommunications services<sup>19</sup> first became effective in 1989. Then as now, that "Alt Reg" law authorizes the PUCO, subject to certain conditions, to either establish alternative regulatory requirements for such a company as to public telecommunications services or exempt a company's service from any provision of general regulatory and rate-making laws (R.C. Chapters 4905. and 4909.) or any PUCO rule or order issued under those laws. Currently, seven of the state's eight large telephone companies--SBC Ohio, Sprint, Cincinnati Bell, CenturyTel, Western Reserve, ALLTEL, and Chillicothe Telephone--operate under alternative regulation plans. Verizon is the exception.

This analysis considers alternative regulation on the basis of the distinctions that the current Alt Reg law makes as to the alternative regulation of basic local exchange service<sup>20</sup> versus the alternative regulation of other public

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<sup>18</sup> *Vonage*, at 8, footnote 46.

<sup>19</sup> *Under current law unchanged by the bill, "public telecommunications service" is broadly defined to mean the transmission by a telephone utility, by electromagnetic or other means, of signs, signals, writings, images, sounds, messages, or data originating and terminating in Ohio regardless of actual call routing. (The term includes "basic local exchange service" as described in footnote 20). The term excludes (1) any system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by an entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity and not for resale, directly or indirectly, (2) the provision of terminal equipment used to originate or terminate telecommunications service, (3) broadcast transmission by radio, TV, or satellite broadcast stations regulated by the federal government, or (4) cable television service (R.C. 4927.01(D)). "Cable television service" means any transmission of video or other programming service to subscribers and any subscriber interaction required for the selection of that video or other programming service (R.C. 4927.01(B)).*

<sup>20</sup> *"Basic local exchange service" refers to end user access to and usage of telephone company-provided services that enable a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area. The service must include local dial tone service; touch tone dialing service; access to and usage of 9-1-1, where available; access to operator services and directory*

telecommunications services. Within that statutory framework there is a special provision applicable to small companies (fewer than 15,000 access lines in current law). For any alternative regulation, however, the PUCO must consider an express state policy in carrying out the law.

**State policy**

(R.C. 4927.02)

The bill modifies the objectives of the state alternative regulation policy. Retaining the existing requirement that the PUCO consider the state policy in carrying out the Alt Reg law, the bill also requires the PUCO to consider the policy in reducing or eliminating the regulation of telephone companies under the law as to any public telecommunications service.

The current policy objectives are as follows: to (1) ensure the availability of basic local exchange service to Ohioans, (2) maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service, (3) encourage innovation of the telecommunications industry, (4) promote diversity and options in the supply of public telecommunications services and equipment, and (5) recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

The bill modifies objective (2) above with the preface that it is state policy to *rely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market*, to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service.

The bill also adds three new policy objectives: to consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to PUCO jurisdiction; to not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services; and to protect the affordability of

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*assistance; a telephone directory and directory listing; per call, caller ID blocking services; access to telecommunications relay service; and access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies. As to carriers, "basic local exchange service" consists of 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. (R.C. 4927.01(A).)*

telephone service for low-income subscribers through the continuation of lifeline assistance programs.

**Alt reg for nonbasic services**

The Alt Reg statute contains two express options authorizing alternative regulation of any public telecommunications service *except* basic local exchange service. One applies to small telephone companies (fewer than 15,000 access lines) only. The other applies to any telephone company. The PUCO has issued an order governing use of the second option by large local exchange companies,<sup>21</sup> and an order making a third, generic option available to any incumbent local exchange company. The three options generally differ as to the standards for PUCO approval, the approval process, and PUCO authority to abrogate or modify the option.

**Small company/nonbasic option** (R.C. 4927.04(B)).<sup>22</sup> Currently, this alternative regulation option authorizes a small telephone company to request, for any public telecommunications service except basic local exchange service, PUCO approval of alternative regulatory requirements or an exemption for the service and company from any provision of general regulatory and ratemaking laws (Chapters 4905. and 4909.), with the exception of the following statutory provisions: (1) abandonment of facilities (R.C. 4905.20 and 4905.21), (2) requirements of adequate service and reasonable, lawful charges (R.C. 4905.22), (3) minimum service standards (R.C. 4905.231), (4) operating approval (R.C. 4905.24, 4905.241, 4905.242, 4905.243, 4905.244, and 4905.25), (5) service complaints (R.C. 4905.26), (6) tariff filing and compliance (R.C. 4905.30 and 4905.32), (7) unlawful and discriminatory rates and charges (R.C. 4905.33 and 4905.35), and (8) service and equipment repair and improvements (R.C. 4905.381). To approve a filing, the PUCO must determine that the alternative

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<sup>21</sup> *In the Matter of the Commission's Promulgation of Rules for Establishment of Alternative Regulation for Large Local Exchange Telephone Companies, Case No. 92-1149-TP-COI, Opinion and Order (Jan. 7, 1993); and Entry on Rehearing (Mar. 10, 1993). This order prescribes the parameters under and process by which a large local exchange company (15,000 or more access lines) may obtain PUCO approval of alternative regulation under R.C. 4927.03 and 4927.04(A). In addition to the discussion in the order itself, the order's Conclusion, its Ordering Clause, and the General Title of the rules contained in the order state that the policies contained in the order concern alternative regulation of such large companies. The text of the rules themselves do not contain any reference to the size of a company. Further clarification of the application of these rules to companies other than large local exchange companies may be warranted.*

<sup>22</sup> R.C. 4927.04(B) also authorizes a "small company/basic option" as explained in a later portion of this analysis bearing that heading.

requirements are in the public interest. There is no express limit on PUCO authority to abrogate or modify such an approval order.

The PUCO has implemented this alternative regulation option by adopting an order providing a "simplified and streamlined. . .process for tariff approvals and changes" for small companies.<sup>23</sup> The order distinguishes between for-profit and not-for-profit small companies.

The bill changes the statutory small company/nonbasic option by redefining a "small" company as one with fewer than 50,000 (rather than 15,000) access lines and by specifying that it is available to any such company *that is an incumbent local exchange company under federal law*. As noted in footnote 5 of this analysis, such a company generally is any local exchange company, or its successor, that provided exchange service on February 8, 1996 (the effective date of the federal Telecommunications Act of 1996).

The bill also states that its amendment of R.C. 4927.04 does not invalidate any PUCO rule or order adopted or issued under that section and in effect prior to the bill's effective date (Section 3).

**General company/nonbasic option** (R.C. 4927.03). The bill changes this option in several ways and requires the PUCO to adopt rules initially implementing the new authority within 120 days after the bill's effective date (R.C. 4927.03(D)).

Under current law, this option authorizes any telephone company, singly or jointly with one or more other companies, to request, for any public telecommunications service *except* basic local exchange service, alternative regulatory requirements or an exemption for the service and company from any provision of general regulatory and ratemaking law (Chapters 4905. and 4909.) or associated PUCO rule or order.<sup>24</sup> To approve the filing, the PUCO must determine

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<sup>23</sup> *In the Matter of the Commission Investigation Into the Implementation of Sections 4927.01 to 4927.05, Revised Code, as They Relate to Regulation of Small Local Exchange Telephone Companies, Case No. 89-564-TP-COI, Finding and Order (Jan. 3, 1991), at LexisNexis 20.*

<sup>24</sup> *The PUCO has cited rules governing retail telecommunications services generally and the regulatory treatment of Tier One and Tier Two service as amplifying this Alt Reg authority. The rules appear in Chapter 4901:1-6, Ohio Administrative Code. They were adopted pursuant to orders issued in In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines. In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code, Case No. 99-998-TP-*

that (1) the proposal is in the public interest *and* (2) either that the company or companies are subject to competition with respect to the service involved or the customers of that service have reasonably available alternatives. The PUCO is prohibited from modifying or abrogating the order more than eight years after the date of the PUCO's approval order.

In notable part, the bill converts the general company/nonbasic option to a *general company/any service option*, by authorizing a company, singly, or jointly with other companies, to seek alternative regulatory requirements or exemptions for any public telecommunications service expressly *including* basic local exchange service.

Additionally, the bill modifies the Alt Reg statute as to allowable exemptions under the new general company/any service option. On one hand, the bill adds authority to request exemption from certain provisions of general telephone law (R.C. Chapter 4931.) (R.C. 4927.03(A)). These provisions are statutes that currently apply to telephone companies irrespective of regulation, including statutes pertaining to line construction and appropriation of private property (R.C. 4931.02 to 4931.07 and 4931.21), pole removal and line repair (R.C. 4931.12 and 4931.13), transmitting messages (R.C. 4931.14 to 4931.18, 4931.26 to 4931.29, and 4931.35), state taxation of line investment (R.C. 4931.22), and criminal penalties (R.C. 4931.99). The bill, however, in effect prohibits an exemption from the 9-1-1 service provisions of the general telephone law.

On the other hand, where a general company/all service option proposal involves basic local exchange service, the bill prohibits that service from being exempted from any of the eight provisions of general regulatory law (Chapter 4905.) enumerated under "**Small company/nonbasic option**" above.

Further as to the new general company/any service option, the bill adds to the two current, generally requisite findings (described in the second paragraph of this portion of the analysis) a new finding that the PUCO must make before granting under the new option an exemption or alternative regulatory requirements for basic local exchange service: the bill requires the PUCO to find that there are no barriers to entry (R.C. 4927.03(B)).

The bill prohibits the PUCO from abrogating or modifying an order granting use of the new general company/any service option more than five years after the date of that order. As indicated previously, current law gives the PUCO

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*COI; Case No. 99-563-TP-COI, Opinion and Order (Dec. 6, 2001); also see Entry (April 1, 2003).*



an eight-year window to abrogate or modify an order authorizing the general company/nonbasic option for a company. (R.C. 4927.03(C).)

Also, under the bill the PUCO must consider rules regarding the establishment under R.C. 4927.03 of elective ("off-the-shelf") alternative regulation unique to small companies (those with fewer than 50,000 access lines).

In addition, the bill removes a provision from R.C. 4927.03 that generally prohibits the PUCO from authorizing an exemption or any modification of any provision of general regulatory or ratemaking law or associated rule or order that would impair the exclusive right of a telephone company under those laws to provide basic local exchange service in the areas served by the company March 17, 1989 (R.C. 4927.03(B)).<sup>25</sup>

The bill also states that its amendment of R.C. 4927.03 does not invalidate any PUCO rule or order adopted or issued under that section and in effect prior to the bill's effective date (Section 3).

**Incumbent company/nonbasic option.** This "off-the-shelf" option was prescribed by a PUCO order<sup>26</sup> issued subsequent to an amendment in 2001 of the definition of "basic local exchange service" in the Alt Reg statute.<sup>27</sup> The order notes that companies may opt not to file for alternative regulation under current R.C. 4927.03 due to the time and cost involved in negotiations and PUCO approval. Further, in its order, the PUCO evaluates its approval of the off-the-shelf option using the approval standards for the general company/nonbasic option of current law.<sup>28</sup>

In the order, the PUCO declares that there are competitive options or reasonably available alternatives for all public telecommunications services except

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<sup>25</sup> *The provision not only affected the authority of the PUCO but also introduced into statute at the time the concept of exclusive franchises for telephone companies.*

<sup>26</sup> *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 (Dec. 6, 2001); Entry on Rehearing (Apr. 25, 2002); Entry (Apr. 1, 2003).*

<sup>27</sup> *See Sub. S.B. 235, 123rd General Assembly, effective April 5, 2001.*

<sup>28</sup> *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 (Dec. 6, 2001), at LexisNexis 39-63.*

basic local exchange service and prescribes rules<sup>29</sup> for what it calls an "off-the-shelf" elective alternative regulation plan available to any incumbent local exchange company. The company can opt into the plan at any time by making the appropriate filing with the PUCO. The company's election is approved automatically on the forty-sixth day, unless otherwise suspended by the PUCO. There is no general, predetermined termination date for the plan of an electing company; the PUCO can revoke a company's authority, however. The off-the-shelf option generally provides pricing flexibility while maintaining rates for basic service and promoting internet access and universal service.<sup>30</sup>

The bill does not affect this option per se. This analysis mentions the option because the PUCO order promulgating the off-the-shelf plan cites R.C. 4927.03 as its statutory authority<sup>31</sup> to promulgate the rules prescribing the option and because the bill broadens current R.C. 4927.03 to include alternative regulation of basic local exchange service. The bill thus may indirectly empower the PUCO to adopt generic options that include such alternative regulation.

#### **Alt reg for basic service or a nonexempt service**

Alternative regulation of basic local exchange service is available under two express provisions of the current Alt Reg statute, the first applicable only to small telephone companies and basic local exchange service, and the second

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<sup>29</sup> *Rules governing the off-the-shelf plan appear in Chapter 4901:1-4, Ohio Administrative Code.*

<sup>30</sup> *Specifically, an incumbent local exchange company electing the "off-the-shelf" option obtains pricing flexibility for any public telecommunications service except basic local exchange service. At the same time, the company must freeze its basic local exchange and caller ID rates; upon request, provide high speed, internet access in areas of Ohio not otherwise likely to have that service; and offer an enhanced lifeline assistance program to subscribers at or below 150% of the federal poverty level.*

*According to the PUCO's rules, all requirements and policies regarding the operation of an incumbent local exchange company will apply to a company that elects the off-the-shelf plan. Specific examples named in the rules include compliance with minimum telephone service standards, lifeline services, discounts for persons with communications disabilities, blocking of 976 services, disconnection of local service rules, 9-1-1 service, privacy and number disclosure requirements, alternative operator service provisions, provisions involving customer-owned, coin-operated telephones, local competition carrier requirements, and carrier access charge policies and orders. (Rule No. 4901:1-4-03, Ohio Administrative Code.)*

<sup>31</sup> *The PUCO rules themselves cite R.C. 4927.03 and 4927.04 as authority for the off-the-shelf option. Further, the rules note that they amplify the Alt Reg statute.*

applicable apparently to any telephone company as to either or both basic local exchange service and any other public telecommunications service not exempted under the current law's general company/nonbasic option previously described. The bill modifies the two options as follows.

**Small company/basic option** (R.C. 4927.04(B)).<sup>32</sup> This option authorizes a small telephone company to request, for basic local exchange service, alternative regulatory requirements or an exemption for the service and company from any provision of general regulatory and ratemaking laws (Chapters 4905. and 4909.) or associated PUCO rule or order except the eight provisions enumerated in the "**Small company/nonbasic option**" above, provided the PUCO determines that the alternative requirements are in the public interest. The same PUCO order that this analysis notes pertains to the small company/nonbasic option pertains to the small company/basic option, and that order distinguishes between for-profit and not-for-profit small companies.

As for the small company/nonbasic option, the bill specifies for the small company/basic option that it is available to any telephone company having fewer than 50,000 access lines *that is an incumbent local exchange company under federal law.*

**General company/basic and nonexempt option** (R.C. 4927.04(A)). This option in the Alt Reg statute currently is available apparently to any telephone company, for basic local exchange service or any other public telecommunications service for which an exemption under the previously described general company/nonbasic option authority has not been approved. A general company/basic or nonexempt filing can be only for an alternative method of establishing a company's rates and charges for the service, that is, a method alternative to the traditional, rate base, rate of return method of ratemaking. To approve the filing, the PUCO must determine that the proposal is in the public interest. If an approved proposal was initiated by the PUCO, the proposal cannot take effect without the company's consent.

The sole modification the bill makes to this authority is replacing the phrase "basic local exchange service or any other public telecommunications service" with the phrase "any public telecommunications service," apparently to reflect that, under continuing law (R.C. 4927.01), "public telecommunications service" includes basic local exchange service.

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<sup>32</sup> R.C. 4927.04(B) also authorizes a "small company/nonbasic option" as explained in an earlier portion of this analysis bearing that heading, and the bill's provision in Section 3 regarding its effect on current PUCO rules or orders (explained in that earlier part of the analysis) applies to the small company/basic option of R.C. 4927.04.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-26-05	pp. 702-703
Reported, H. Public Utilities and Energy	05-26-05	p. 878
Passed House (74-21)	06-01-05	pp. 894-896

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