Ohio Legislative Service Commission

Bill Analysis

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BILL SUMMARY

- Revises state-policy objectives for the provision of telecommunications service.
- Repeals current law governing alternative regulation of telephone companies.
- Specifies that the PUCO has no authority over a telecommunications service that is not yet commercially available on the bill's effective date unless necessary for the protection, welfare, and safety of the public.
- Provides that the PUCO does not have jurisdiction over wireless service except to the extent authorized by federal law and except as provided under certain Ohio statutes, specifically those pertaining to (1) assessments supporting the PUCO and the Office of the Consumers' Counsel and the filing of annual reports for assessments, (2) PUCO jurisdiction and authority regarding delegated federal law, (3) registration of wireless service providers, (4) adjudication of disputes, (5) 9-1-1 service, and (6) certain penalties.
- Specifies that a number of current statutes do not apply to telephone companies, including statutes pertaining to PUCO jurisdiction, accounting requirements, charging tariffed rates, the issuance of stocks, bonds, and notes, uniform pricing, and other statutes, unless the PUCO determines they do apply.
- Vests the PUCO with the authority to perform federal obligations including obligations under federal interconnection provisions, arbitrating disputes under the Telecommunications Act of 1996, administering truth-in-billing, and other federal obligations.

- Requires, as a condition of operating in Ohio, that a telephone company obtain a certificate with the PUCO and that a wireless service provider register with the PUCO.

- Prohibits telephone companies, except wireless service providers, from committing certain unfair or deceptive acts or practices, including untruthful communication concerning material terms and conditions of service and nondisclosure of company contact information in solicitations except where not practical to include the information, and any other unfair or deceptive act or practice determined by the PUCO, provided telephone companies receive notice of such additional acts or practices.

- States that a consumer purchase of wireless service is subject to the Consumer Sales Practices Act notwithstanding any provision of that act to the contrary.

- Permits a telephone company except for an incumbent local exchange carrier providing basic local exchange service to withdraw or abandon service upon 30-days' notice to the PUCO and customers.

- Requires telephone companies providing basic local exchange service to ensure available, adequate, and reliable service.

- Requires the PUCO to adopt rules for the provision of basic local exchange service that provide for the following: (1) installation of service within five days of receipt of an application, (2) outages fixed within 72 hours, (3) disconnection for nonpayment not earlier than 14 days after a bill due date, (4) reconnection not later than five days after receipt of payment in full, (5) permitting a utility to require a deposit not to exceed a reasonable estimate of three-months service charges for the installation of service, (6) maintaining 9-1-1 service for 14 days after disconnection for nonpayment, and (7) reconnection upon a customer entering into a payment arrangement.

- Exempts an incumbent local exchange carrier from providing basic local exchange service or any service to occupants of multitenant real estate in certain circumstances where the real estate owner takes action to benefit another service provider.

- Permits an incumbent local exchange carrier to increase rates for basic local exchange service by $1.25 once during the first 12 months after the bill's effective date (and yearly thereafter) upon 30-days' notice to the PUCO and customers, and prohibits the banking of these rate increases.

- Requires an incumbent local exchange carrier eligible for universal service support to implement lifeline service for eligible customers, defined as being at or below

150% of the federal poverty level, and permits a carrier to offer lifeline customers bundles and packages at prevailing rates.

- Requires that carriers offer special payment arrangements to lifeline customers with past-due bills with an initial payment not to exceed $25 before the installation of service.

- Prohibits requiring carriers offering lifeline service to market lifeline service above what is federally required.

- Permits the recovery of lifeline service discounts not recovered through federal or state funding through the establishment of a surcharge on end users, which surcharge may be reviewed by the PUCO.

- Requires that the rates, terms, and conditions for carrier access, N-1-1 services, including 9-1-1 service, pole attachments and conduit occupancy, pay telephone access lines, toll presubscription, and telecommunications relay service be approved and tariffed in the manner prescribed by PUCO rule.

- Permits the PUCO to order changes in a telephone company's rates for carrier access but prohibits the PUCO from requiring a telephone company to reduce its rates for carrier access that are in effect on the bill's effective date, except on a revenue-neutral basis.

- Prohibits the PUCO from establishing any requirements for the unbundling of network elements, for the resale of telecommunications service, or for network interconnection that exceed or are inconsistent with or prohibited by federal law.

- Requires a telephone company to provide at least 15-days' advance notice to its affected customers of any material change in the rates, terms, and conditions of a service and any change in the company's operations "that are not transparent to customers and may impact service."

- Authorizes the PUCO to adopt rules regarding the rates, terms, and conditions of intrastate telecommunications service initiated from an inmate telephone instrument.

- Permits the PUCO to investigate or examine the books, records, or practices of any telephone company.

- Permits any person to file a complaint with the PUCO alleging that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory,

or in violation of or noncompliance with any of the bill's provisions or a PUCO rule or order.

- Permits any dispute between telephone companies, between telephone companies and wireless service providers, or between wireless service providers that is within the PUCO's jurisdiction under the bill's provisions to be brought by a complaint filing under the bill's complaint procedure.

- Redefines "public utility" to exclude internet protocol-enabled services, including voice over internet protocol services and providers of advanced services, broadband service, information services, and any telecommunications service that is not yet commercially available on the bill's effective date.

- Removes a provision in current law authorizing the PUCO to require a telephone company to file supplemental reports of each exchange area it owns or operates and removes the requirement that the PUCO require such supplemental report if 15% of the subscribers of an exchange request that.

- Requires that a telephone company's lines and facilities not unreasonably interfere with the practical uses of the property on which they are located and requires a telephone company to repair defective lines and facilities.

- Prohibits the PUCO from establishing an expiration date for the protection of trade secret and other confidential information from public disclosure.

- Removes a provision of current law that states that unless otherwise ordered by the PUCO each telephone company must file a copy of any contract, agreement, note, bond, or other arrangement entered into with any telephone management, service or operating company.

- Removes a provision of current law that requires every telephone company to carry a proper and adequate depreciation or deferred maintenance account.

- Requires telephone companies to file rate schedules only for the following rates: charges for use of attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of attachments in conduit duct space, $1.25 rate increases authorized under the bill, lifeline service, discounts for operator-assisted and direct-dial services for persons with communication disabilities, carrier access and N-1-1 services, inmate telephone instruments, and 9-1-1 service.

- Sets forth new standards for the approval or acquisitions and mergers where the applications must show that the desired action is not contrary to public interest.

- Repeals current law that requires that it be deemed prima facie evidence of inadequate service by any telephone company, except one serving less than 500 telephones, for more than ten persons, parties, or subscribers to be served on any one telephone line.

- Repeals current law that permits the PUCO to make investigations as it deems necessary and ascertain and prescribe reasonable standards of telephone service.

- Repeals provisions of current law that authorize a telephone company to (1) apply to exercise a right of franchise or render service in an area of inadequate service or (2) merge, consolidate, or integrate to provide service in an area of inadequate service.

- Repeals various provisions of current law that allow for changes in service focused on the provision of adequate service.

- Repeals a provision of current law that permits the PUCO to order repairs and improvements in telephone service.

- Repeals a provision of current law that permits the PUCO to require two or more telephone companies to form continuous lines.

- Repeals a prohibition against the willful and malicious interference with a telegraph or telephone, line, wire, or cable and repeals a prohibition against a person connected with a telephone company willingly divulging a private telephone message.

- Repeals a provision permitting PUCO dismissal of a petition for approval of an inter-utility transaction or merger.

- Repeals a provision of current law that prevents threat or harassment over the telephone.

- Removes references in and provisions of current law relating to telegraph companies and their regulation by the PUCO.

- Removes defined terms from definition sections in Title 49 that are not used in the applicable chapter.

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CONTENT AND OPERATION

Background--PUCO regulation of telecommunications service

Current law concerning the regulation of telecommunications services is a combination of federal and state statutes, rules and regulations, and case law. Ohio's telecommunications statutes currently consist primarily of Chapters 4905., 4909., and

4927. of the Revised Code. Under those chapters, the PUCO regulates "telephone companies" that are "public utilities." As technology has changed over the last 30 years and the telecommunications market has become competitive, the regulatory concept of a "telephone company" has changed. The Legislature reacted to these changes by enacting law concerning alternative regulation of telephone companies, currently codified in Revised Code Chapter 4927.

Current law permits the telecommunications service of a public-utility telephone company[1] to be exempted from all or certain requested portions of the law that prescribes the PUCO's authority to regulate public utilities (Chapters 4905. and 4909. of the Revised Code). To qualify for this exemption, a standard of competition must be met. Through a substantial revision of Chapter 4927. and other provisions of current law, the bill revises the statutory framework for the PUCO's regulation of telecommunications service.

State policy

(R.C. 4927.02)

The bill repeals and replaces the operative provisions of Chapter 4927., but only revises the state telecommunications policy. The current state policy applies only to matters of alternative regulation of telephone utilities under current Chapter 4927. and requires the PUCO to consider the policy in carrying out current law governing alternative regulation of telephone utilities. The bill modifies the current policy and requires the PUCO to consider it in carrying out the bill's provisions that are to replace the alternative-regulation provisions.

The bill leaves unchanged the following policy objectives:

(1) To ensure the availability of adequate basic local exchange service to citizens throughout Ohio;

(2) Not to unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services.

The bill revises the following policy objectives as follows:

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[1] A "telephone company" is a public utility subject to regulation under Ohio law if it is engaged in the business of transmitting telephonic messages to, from, through, or in Ohio (R.C. 4905.03(A)(1) as re-designated by the bill). For purposes of the new regulatory scheme in the bill, a "telephone company" includes a company that provides telecommunication service other than advanced, broadband, information, or Internet protocol-enabled services (which services are described later in this analysis).

(1) One of the current policy objectives is to rely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market, and to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service. The bill (a) specifies that the objective is to rely "primarily" on market forces, (b) removes the qualifier that market forces are to be relied on "where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market," and (c) instead of the objective to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service, the objective under the bill is to maintain reasonable (as opposed to "just and reasonable") "service levels for telecommunications services at reasonable rates."

(2) Where the objective under current law is to encourage innovation in the telecommunications industry, the bill adds "and the deployment of advanced telecommunications services."

(3) The bill removes the word "public" from the phrase "public telecommunications services" in the following two objectives: (a) promote diversity and options in the supply of public telecommunications services and equipment throughout the state, (b) recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate. The bill also removes the phrase "where appropriate" in the latter objective.

(4) One of the current policy objectives is to consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to the PUCO's jurisdiction. Under the bill, the objective is to "[c]onsider the regulatory treatment of competing and functionally equivalent services and, to the extent practicable, provide for equivalent regulation of all telephone companies and services."

(5) One of the current policy objectives is to protect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs. The bill specifies that the lifeline assistance programs are federal. It also adds that the objective is to protect the affordability of low-income service through the continuation of the lifeline assistance programs "with an appropriate cost recovery mechanism for any additional assistance."

The bill also adds two policy objectives:

(1) To provide incentives for competing telephone companies to provide advanced, high-quality telecommunications service to citizens throughout Ohio;

(2) To create a regulatory climate that provides incentives to create and maintain high technology jobs for Ohioans.

Alternative regulation of telephone companies under current law

(R.C. 4927.01 to 4927.05)

Under current law governing alternative regulation of telephone utilities, the PUCO may, upon its own initiative or upon application of a telephone company, exempt a telephone company as to any public telecommunications service, including basic local exchange service, from any provision governing the powers of the PUCO,[2] any provision governing the fixation of public-utility rates,[3] certain provisions governing telegraph and telephone companies,[4] or any rule or order adopted or issued under those provisions. But there are a number of statutes from which the PUCO may not exempt a telephone company with regard to basic local exchange service.[5] The PUCO may also establish alternative regulatory requirements to apply to the exempted public telecommunications service and company. To take any of these actions, the PUCO must find that the action is in the public interest and that either (1) the telephone company is subject to competition with respect to the service or (2) the customers of the service have reasonably available alternatives. Current law sets forth a number of factors for the PUCO to consider in determining whether these conditions are met. To authorize an exemption or establish alternative regulatory requirements for basic local exchange service, the PUCO must also find that there are no barriers to entry to the market.

Current law permits the PUCO to prescribe different classifications, procedures, terms, or conditions for different telephone companies as long as they are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any telephone company.

Current law also specifies that the PUCO has jurisdiction over every telephone company that receives an exemption or to which alternative regulatory requirements apply. Consequently, this law authorizes the PUCO to, after notice and hearing, change any order that granted an exemption or established alternative requirements if the PUCO determines that the findings upon which the order was based are no longer valid

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[2] R.C. Chapter 4905.

[3] R.C. Chapter 4909.

[4] R.C. 4931.01 to 4931.35.

[5] These statutes are R.C. 4905.20, 4905.21, 4905.22, 4905.231, 4905.24, 4905.241, 4905.242, 4905.243, 4905.244, 4905.25, 4905.26, 4905.30, 4905.32, 4905.33, 4905.35, and 4905.381.

and that the change is in the public interest. But the PUCO may not make such a change more than five years after the order was entered into, unless the affected telephone company consents. Current law also permits the PUCO to adopt rules to carry out the alternative-regulation laws described above.

Current law permits the PUCO to establish rates and charges for any public telecommunications service for which it has not provided an exemption or alternative regulatory requirements by a method other than the standard ratemaking method. It may do this on its own initiative or upon application by a telephone company. To use an alternative method, the PUCO must find that the use of the method is in the public interest. Also, where the alternative method is proposed by the PUCO, the applicant must consent. Alternative methods may include methods that (1) maintain universal telephone service in Ohio, (2) minimize the costs and time expended in the regulatory process, (3) tend to assess the costs of any telecommunications service to the entity or service that causes such costs to be incurred, (4) afford rate stability, (5) promote and reward efficiency, quality of service, or cost containment by telephone companies, or (6) provide sufficient flexibility and incentives to the telecommunications industry to achieve high quality, technologically advanced, and universally available telecommunications services at just and reasonable rates and charges.

This law specifies that an application that proposes an alternative method of establishing rates and charges that could result in an increase in a rate or charge for a service for which the PUCO has not provided an exemption or alternative regulatory requirement is to be deemed an application for an increase in rates and charges and therefore subject to the standard ratemaking-application procedure in current law. The law also provides that an application for the establishment of rates under the standard ratemaking statute where the application is not for an increase in rates and charges, but that proposes an alternative method of establishing rates and charges and the PUCO has not provided an exemption or alternative regulatory requirements, the application must include the following information:

(1) A report of the company's property used and useful in rendering the service referred to in the application;

(2) A complete operating statement of the last fiscal year;

(3) A statement of the income and expense anticipated under the application;

(4) A statement of financial condition summarizing assets, liabilities, and net worth.

Current law also provides that any person may request a hearing on the application. The PUCO is also permitted to, upon the application of any telephone company that is an incumbent local exchange carrier[6] with fewer than 50,000 access lines, to exempt the company from certain statutes[7] or establish alternative regulatory requirements. The PUCO must find that the alternative requirements are in the public interest. The PUCO, in carrying out these provisions, may use different methods of establishing rates and charges of different companies, if the methods are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any company. The PUCO is also authorized to adopt rules to carry out the provisions.

Provisions replacing alternative regulation under the bill

The bill repeals the alternative-regulation sections described above and replaces them with the following provisions. Additionally, the bill requires that the PUCO initially adopt rules to implement those provisions not later than 120 days after the bill's effective date. It authorizes the PUCO, subject to the authority granted it under the chapter, to adopt such other rules as it finds necessary to carry out the chapter. The bill also requires the PUCO, coincident with the adoption of the initial rules, to rescind the following rules and file the requisite notice of the rescissions with the Legislative Service Commission and the Secretary of State within five days: O.A.C. Chapters 4901:1-4 (alternative regulation rule for incumbent local exchange carriers), Chapter 4901:1-5 (furnishing of intrastate telecommunications service by local exchange

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[6] Ohio law and the bill use the federal definition of an "incumbent local exchange carrier," which is the local exchange carrier that, on February 8, 1996 (the date of enactment of the Telecommunications Act of 1996), provided telephone exchange service in that area and (1) was deemed to be a member of the exchange carrier association under federal regulations or (2) on or after February 8, 1996, became a successor or assign of a member of the exchange carrier association. The bill defines "telephone exchange service" to mean telecommunications 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, or combination thereof, by which a customer can originate and terminate a telecommunications service. (R.C. 4927.01.)

[7] The PUCO is permitted to exempt the carrier from any provision of R.C. Chapter 4909., which governs the fixation of rates, and certain provisions of R.C. Chapter 4905., setting forth powers of the PUCO, except R.C. 4905.20, 4905.21, and 4905.22 (abandonment of facilities), 4905.231 (minimum standards for telephone service), 4905.24 (prohibition of exercising right of franchise), 4905.241 (applications to render service in an area of inadequate service), 4905.242 (mergers in the case of inadequate service), 4905.243 (petitions for changes in service), 4905.244 (prohibition on continuation of inadequate service), 4905.25 (petition for service in area without service), 4905.26 (service complaints), 4905.30 (required filing of rates), 4905.32 (required collection of scheduled rates), 4905.33 (prohibition of special rates), 4905.35 (prohibition of discrimination), and 4905.381 (PUCO-ordered repairs).

companies) 22, and 4901:1-6 (retail telecommunication services), except for Rule Nos. 4901:1-5-09 (slamming and preferred carrier freezes), 4901:1-6-18 (alternative operator services and secured inmate facilities services), 4901:1-6-24 (telecommunications relay service assessment procedures), and related definitions. Under the bill, rescission of these rules will take effect as provided by law and, notwithstanding any other provision of the Revised Code, is not subject to legislative review or invalidation. And, the bill prohibits the PUCO taking enforcement action, on or after the bill's effective date, against any telephone company, as defined in R.C. 4905.03 as amended, regarding any provision of any of the above rules required to be rescinded, except for Rule Nos. 4901:1-5-09, 4901:1-6-18, and 4901:1-6-24 and related definitions.

PUCO jurisdiction

(R.C. 4927.03)

The bill establishes that the PUCO has jurisdiction over telecommunications service[8] and telephone companies in this state as described in the bill's new telecommunications regulatory scheme. And, unless that new scheme provides otherwise, the bill states that the PUCO has no authority over the quality of service provided by, and the service rates, terms, and conditions of, a telephone company. The bill specifies that, with respect to internet protocol-enabled services, including voice over internet protocol service,[9] the PUCO has jurisdiction to act consistent with current law that prohibits the PUCO from acting inconsistently with federal law. But the bill specifies that the PUCO may act in this manner in performing the acts of a state commission as defined under federal law, and in adjudicating disputes between telephone companies and providers of internet protocol-enabled services, including

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[8] Current law uses the term "public telecommunications service," while the bill uses the term "telecommunications service." "Public telecommunications service" is currently defined as the transmission by a telephone company, by electromagnetic or other means, of signs, signals, writings, images, sounds, messages, or data originating and terminating in Ohio regardless of actual call routing, but does not include a system, including its construction, maintenance, or operation, for the provision of telecommunications service, or any portion of such service, by any 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; the provision of terminal equipment used to originate or terminate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service. The bill defines "telecommunications service" as 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. "Telecommunications" is defined to mean 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 and received. (R.C. 4927.01.)

[9] See definitions of "internet protocol-enabled services" and "voiceover internet protocol service" discussed under the heading "**Internet protocol-enabled services**," in the text later in this analysis.

voice over internet protocol service, under the bill's applicable provisions (see "**Filing of complaints with PUCO**," below).

The bill also provides that the PUCO has no authority over a telecommunications service that is not commercially available on the bill's effective. But if the PUCO finds that the exercise of jurisdiction is necessary for the protection, welfare, and safety of the public, then it may adopt rules specifying the necessary regulation.

Regarding wireless service or wireless service providers,[10] the bill states that the PUCO does not have jurisdiction, except as provided under certain sections of the Revised Code, and only to the extent authorized by federal law, including federal regulations. The statutes under which the PUCO may have jurisdiction pertain to (1) PUCO assessments to fund telecommunications relay service costs (telecommunications relay service enables an individual with a hearing or speech impairment to communicate by wire or radio with a hearing individual) (R.C. 4905.84), (2) PUCO jurisdiction to perform obligations authorized by or delegated to it under federal law, including federal regulations (R.C. 4927.04) (see "**Federal obligations**," below), (3) wireless service provider registration with the PUCO before operating in Ohio (R.C. 4927.05), (4) dispute (complaint process regarding telephone company) rates, practices, or services and dispute process available to telephone companies and wireless service providers (R.C. 4927.18), (5) 9-1-1 service (R.C. 4931.40 to 4931.70), and (6) criminal penalties regarding violations of 9-1-1 service law and Telephone Relay Service Law (R.C. 4931.99). The bill also specifies that wireless service providers are subject to the assessments on public utilities to fund PUCO operations and the filing of annual reports with the PUCO that aid the PUCO in calculating wireless service provider assessments for PUCO operations (R.C. 4905.10 and 4905.14) (see "**Annual reports**," below). Wireless service providers are also subject to assessments to fund the Office of the Consumer's Counsel (OCC) operations (R.C. 4911.18). The bill gives the PUCO necessary authority to enforce all the sections described above to which wireless service providers are still subject.

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[10] The bill defines a "wireless service provider" as a facilities-based provider of wireless service to one or more end users in Ohio. It defines "wireless service" as federally licensed commercial mobile service as defined in federal law (47 U.S.C. 332(d)) and further defined as commercial mobile radio service in 47 C.F.R. 20.3. For the purpose of the definition, commercial mobile radio service is specifically limited to mobile telephone, mobile cellular telephone, paging, personal communications services, and specialized mobile radio service provided by a common carrier in Ohio and excludes fixed wireless service. (R.C. 4927.01.)

Statutes inapplicable to telephone companies

(R.C. 4927.03)

The bill states that certain sections of Chapters 4903. and 4905. do not apply to telephone companies or, as applicable, to their officers, employees, or agents, except to the extent necessary for the PUCO to carry out the new telecommunication regulation under Chapter 4927. Those sections are: R.C. 4903.02, 4903.03 (examination of witnesses and records, production of records), 4903.24 (costs and expenses of investigation), 4903.25 (violations by officers, employees, and agents), 4905.04 (PUCO power of utility regulation), 4905.05 (scope of jurisdiction over utilities), 4905.06 (PUCO supervisory authority over utilities), 4905.13 (PUCO authority to prescribe utility financial accounting requirements), 4905.15 (utility duty to submit accounts, operating reports, and other information the PUCO requests), 4905.16 (utility duty to file contracts upon PUCO request), 4905.17 (PUCO authority to require utility construction accounts), 4905.22 (duty to provide necessary and adequate service and facilities and prohibition against unjust or unreasonable charges), 4905.26 (PUCO complaint authority), 4905.27 (PUCO authority to prescribe standard commercial units of utility products or services), 4905.28 (PUCO authority to prescribe quality standards), 4905.29 (PUCO authority regarding the examination and testing of appliances or devices used for measuring utility products and services), 4905.31 (special contract law), 4905.32 (duty to charge tariffed rates), 4905.33 (duty of uniform pricing/nondiscrimination), 4905.34 (authority to offer reduced rates or free service to governmental entities or the utility's employees), 4905.37 (PUCO authority to change rules and regulations of public utilities), 4905.38 (PUCO authority to order repairs and improvements in utility service), 4905.39 (authority to order utility additions and extensions), 4905.40 to 4905.42, 4905.45, and 4905.46 (issuance of stocks, bonds, and notes), 4905.47 (capitalization), 4905.48 (PUCO approval of contracts between utilities), 4905.54 (utility duty to comply with PUCO orders), 4905.55 (utility liability for acts of an officer, employee, or agent), 4905.56 (violations by officers, employees, and agents), and 4905.60 (PUCO mandamus and injunctive authority).

Definition changes impacting PUCO jurisdiction

Advanced services

(R.C. 4905.042, 4905.02, and 4927.01)

The bill defines "advanced services" with reference to its meaning under federal regulation (47 C.F.R. 51.5): "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."

The bill amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of advanced services, including a telephone company. This definition applies to other chapters of Title 49, including Chapters 4901., 4903., and 4909., and it applies to other sections of the Revised Code.[11] Thus, the bill's exclusion of any provider of advanced services as a "public utility" under Chapter 4905. affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Current law prohibits the PUCO from exercising, over advanced services, any jurisdiction that is prohibited by or is inconsistent with its jurisdiction under federal law. The bill preserves this prohibition, although, because of the exclusion made in the definition of "public utility," not as a public utility.

Broadband service

(R.C. 4905.02(E), and 4927.01)

The bill defines "broadband service" as having whatever definition or classification the Federal Communications Commission determines.

The bill amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of broadband service, including a telephone company. As explained in "**Advanced services**," above, the definition of "public utility" applies to other chapters of Title 49, including Chapters 4901., 4903., and 4909., and it applies to other sections of the Revised Code. Thus, the bill's exclusion of any provider of broadband service as a "public utility" affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Information services

(R.C. 4905.02(E), and 4927.01)

The bill defines "information services" with reference to its meaning under federal law (47 U.S.C. 153(20): "the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service."

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[11] R.C. 102.03 (restrictions on public officials or employees); R.C. 163.01 (appropriation of property); R.C. 169.01 (unclaimed funds); R.C. 1701.66 (recording of mortgages); R.C. 1707.01 (securities); R.C. 1728.13 (community redevelopment corporations); R.C. 4719.01 (telephone solicitation); and possibly other sections.

The bill amends the definition of "public utility" to exclude any provider of information services, including a telephone company. As explained in "**Advanced services**," above, the definition of "public utility" applies to other chapters of Title 49, including Chapters 4901., 4903., and 4909., and it applies to other sections of the Revised Code. Thus, the bill's exclusion of any provider of information services as a "public utility" affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Not-yet-available services

(R.C. 4905.02(E))

The bill amends the definition of "public utility" to exclude any telecommunications service that is not commercially available on the bill's effective date. As explained in "**Advanced services**," above, this definition applies to other chapters of Title 49, including Chapters 4901., 4903., and 4909., and it applies to other sections of the Revised Code. Thus, the bill's exclusion of any provider of such services as a "public utility" affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Internet protocol-enabled services

(R.C. 4905.02 and 4927.03(A))

Under the bill, "internet protocol-enabled services" means any services, capabilities, functionalities, or applications that are provided using internet protocol or a successor protocol to enable an end-user to send or receive data, video, or voice communications in internet protocol format or a successor format, regardless of how any particular such service is classified by the Federal Communications Commission, and includes voice over internet protocol service. "Voice over internet protocol service" is defined under the bill as a service that uses a broadband connection from an end-user's location and enables real-time, two-way, voice communications that originate or terminate from the user's location using internet protocol or a successor protocol, including, but not limited to, any such service that permits an end user to receive calls from and terminate calls to the public switched network.

The bill amends the definition of "public utility" to exclude internet protocol-enabled services (including voice over internet protocol service). This definition applies to other chapters of Title 49, including Chapters 4901., 4903., and 4909., and it applies to other sections of the Revised Code.[12] Thus, the bill's exclusion of any provider of such

[12] R.C. 102.03 (restrictions on public officials or employees); R.C. 163.01 (appropriation of property); R.C. 169.01 (unclaimed funds); R.C. 1701.66 (recording of mortgages); R.C. 1707.01 (securities); R.C.

services as a "public utility" for purposes of Chapter 4905. affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Federal obligations

(R.C. 4905.04 and 4927.04)

The bill removes the provisions of current law that expressly vest the PUCO with such power and jurisdiction as is reasonably necessary for it to perform the acts of a state commission under federal law. Instead, the bill establishes that the PUCO has such power and jurisdiction as is reasonably necessary for it to perform the obligations authorized by or delegated to it under federal law, including federal regulations. The bill specifies that these obligations include performing the acts of a state commission as defined in the federal Balanced Budget Act of 1997 and include, but are not limited to, carrying out any of the following:

(1) Rights and obligations under the federal interconnection provisions;

(2) Authority to mediate and arbitrate disputes under the federal Telecommunications Act of 1996;

(3) Administration of telephone numbers and number portability;

(4) Certification for universal service funding;

(5) Administration of truth-in-billing;

(6) Administration of customer proprietary network information;

(7) Outage reporting consistent with federal requirements.

Certification requirements for operating in Ohio

(R.C. 4927.05 and O.A.C. 4901:1-6-10)

Current PUCO rules require all telephone companies, except commercial mobile radio service providers, to be PUCO-certified. Minimum requirements for certification include (1) a certificate of good standing and certificate to operate as an out-of-state entity issued by the Ohio Secretary of State and, if applicable, fictitious name authorization, (2) full address and telephone number, and if available, e-mail address and web site, (3) verification of compliance with any applicable affiliate transaction

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1728.13 (community redevelopment corporations); R.C. 3735.02 (cessation of regulated operations); R.C. 4719.01 (telephone solicitation); and possibly other sections.

requirements, (4) verification that the applicant will maintain accounting records pursuant to generally accepted accounting principles, (5) documentation attesting to the applicant's satisfactory technical expertise relative to the proposed service offerings, (6) documentation indicating the applicant's satisfactory corporate structure, managerial expertise, and ownership, (7) information pertaining to any similar operations provided by the applicant in other states, (8) evidence of notice to the Ohio Department of Taxation, Public Utilities Tax Division, of its intent to provide service, (9) any waivers from retail telecommunications service rules, and (10) documentation attesting to the applicant's financial viability including, at a minimum, an actual and pro forma income statement and balance sheet.

Additional requirements for a competitive local exchange carrier include (1) its proposed end user tariffs, or, if no tariffs are required, a list of services planned to be offered, (2) a list of the incumbent local exchange carrier exchanges it intends to serve, and (3) if applicable, a notarized affidavit signed by an authorized employee and accompanied by the bona fide request for interconnection letter sent to appropriate incumbent local exchange carriers that verifies that the applicant has entered into interconnection negotiations and/or transport and termination agreements with the incumbent local exchange carrier (unless the carrier intends to resell the retail services of an underlying facilities-based carrier).

For a provider of basic local exchange service, the certification determination is to include a review of the applicant's financial, managerial, and technical ability to provide the proposed service. A hearing on a certification application may be ordered. There is a general, 30-day automatic approval date for telephone company certifications. The PUCO may revoke any certification upon a demonstration that the company has engaged in a pattern of conduct in violation of Ohio law, including rules. The PUCO must grant providers of competitive telecommunication services statewide operating authority provided the company meets the associated requirements.

The bill requires, as a condition of operating in Ohio, that a telephone company obtain a certificate from the PUCO, and that a wireless service provider register with the PUCO. The bill exempts incumbent local exchange carriers from this requirement. The application for a certificate or registration is to include all of the following:

(1) The company's or provider's name and address;

(2) The name and contact information of a contact person;

(3) A service description, including the general geographic areas served, but not maps of service areas;

(4) Evidence of registration with the Secretary of State;

(5) Evidence of notice to the Public Utilities Tax Division of the Department of Taxation of the company's or provider's intent to provide service;

(6) As to a certification application, evidence of financial, technical, and managerial ability to provide adequate service to the public consistent with law.

The bill permits the PUCO to suspend or reject the certification application of a telephone company if it finds, within 30 days after the application's submission, that the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service to the public consistent with law.

A telephone company not holding a certificate, or a wireless service provider not registered, on the effective date of the bill, must file a certificate application or registration application, each in a manner set forth in PUCO rules. Certificates and registrations are to be updated in the manner set forth in rules to be adopted by the PUCO.

Unfair or deceptive acts or practices prohibited

(R.C. 4927.06 and O.A.C. 4901:1-5-04)

Under current law unchanged by the bill, the Consumer Sales Practices Act (R.C. 1345.01 to 1345.13) is not applicable to telephone companies and other companies to which Ohio public utility law applies. That act governs unfair, deceptive, and unconscionable acts or practices involving consumer transactions. A current PUCO rule (O.A.C. 4901:1-5-04),[13] which the bill requires to be rescinded, delineates unfair and deceptive acts and practices for "telecommunications providers," meaning a telephone company that provides telecommunications services other than commercial mobile radio service (except fixed wireless service) under the PUCO's jurisdiction. The acts and practices under the current rule are largely similar to those of the bill, except that the rule requires a telecommunications provider to address a customer's billing or service inquiry at the time that the customer calls, to discontinue any sales discussion upon a customer's request, and not to engage in sales practices when a customer calls to report service problems or to make payment arrangements, until the telecommunications provider first confirms that it has completely responded to the customer's concerns.

[13] The rule is adopted pursuant to authority repealed by the bill conferring power for the PUCO to establish minimum standards of telephone service (R.C. 4905.231).

The bill prohibits a telephone company (except wireless service providers) from committing any unfair or deceptive act or practice in connection with the offering or provision of any telecommunications service in Ohio. The bill specifies that a failure to comply with any of the following constitutes an unfair or deceptive act or practice:

(1) Any communication by the company must be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations. The bill specifies that this requirement does not apply where it is not practicable to "include that information."

(2) Any written service solicitation, marketing material, offer, contract, or agreement, as well as any written response from the company to a service-related inquiry or complaint must disclose the company's name and contact information. Again, the bill specifies that this requirement does not apply where it is not practicable to include the information.

(3) The company must inform its customers of their rights and responsibilities concerning inside wire, the repair and maintenance of customer-owned equipment, and the use of a network interface device, and of any charges that the company imposes for a diagnostic visit.

The bill provides that the PUCO may determine in rules or adjudication of a complaint (see "**Filing of complaints with PUCO**," below) any additional act, practice, or omission that constitutes an unfair or deceptive act or practice. The PUCO is to provide notice to all telephone companies specifying any additional act, practice, or omission. The bill also specifies that no telephone company is to be liable for any act, practice, or omission absent the required notice and adequate time for implementation.

While the bill exempts wireless service providers from the unfair or deceptive acts provisions, it declares that a consumer purchase of wireless service or a related product is to constitute a consumer transaction for purposes of the Consumer Sales Practices Act, notwithstanding any provision of the act to the contrary.

Withdrawing service

(R.C. 4927.07)

The bill permits a telephone company (except for an incumbent local exchange carrier providing basic local exchange service) to withdraw any telecommunications service if it gives at least 30-days' prior notice to the PUCO and affected customers. The bill also permits a telephone company (except for an incumbent local exchange carrier providing basic local exchange service) to abandon service entirely with 30-days' prior

notice to the PUCO, to its wholesale and retail customers, and any telephone company wholesale provider of its services.

Basic local exchange service

(R.C. 4927.01 and 4927.08 to 4927.10)

The bill requires that a telephone company providing basic local exchange service conduct its operations as to ensure that the service is available, adequate, and reliable, consistent with applicable industry standards.[14] The PUCO is to adopt rules applicable to the provision of basic local exchange service. The bill specifies that the rules are to conform to the following, and that no other rules regarding that service may be adopted except as expressly authorized by the bill's provisions:

(1) Basic local exchange service is to be installed within five business days of the receipt of a completed application for that service.

(2) A basic local exchange service outage or service-affecting problem is to be repaired within 72 hours after being reported.

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[14] Under current law, "basic local exchange service" means "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, and that consist of" certain enumerated services. Those services under current law are (1) local dial tone service, (2) touch tone dialing service, (3) access to and usage of 9-1-1 services, where available, (4) access to operator services and directory assistance, (5) provision of a telephone directory and a listing in that directory, (6) per call, caller identification blocking services, (7) access to telecommunications relay services, and (8) access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies. The bill alters the definition by providing that it means "residential-end-user access to and usage of telephone-company-provided services over a single line or small-business-end-user access to and usage of telephone-company provided services over the primary access line of service, which in the case of residential and small-business access and usage is not part of a bundle or package of services, that does both of the following: enables a customer to originate or receive voice communications within a local service area as that area exists on the effective date of the [bill]; and consists" of certain enumerated services. The services include 1-8 described above, with a few changes and additions. With respect to additional services, "basic local exchange service" under the bill also includes flat-rate telephone exchange service for residential end users. In addition, the bill expands (5) above to allow the directory to be provided "in any reasonable format for no additional charge" and requires "reasonable accommodations for private listings." (R.C. 4927.01.)

The bill also alters the definition of "local service area" (as that term is used in basic local exchange service) to mean the "geographic area that may encompass more than one exchange area and within which a telephone customer may complete a call to another telephone customer at not more than the basic local exchange service rate." (R.C. 4927.01.)

"Small business" is defined as a "nonresidential service customer with three or fewer basic local exchange service access lines." (R.C. 4927.01.)

(3) A telephone company may disconnect basic local exchange service for nonpayment of any amount past due on a billed account not earlier than 14 days after the due date of the customer's bill, provided that the customer is given notice of the disconnection seven days before the disconnection.

(4) Reconnection of service that was previously disconnected for nonpayment is to be completed no later than five business days after the receipt of payment in full of the amount owed.

(5) A telephone company may require a deposit, not to exceed a reasonable estimate of three-months' service charges, for the installation of basic local exchange service for any person that it determines, in its discretion, is not creditworthy.

(6) If residential basic local exchange service is disconnected for nonpayment, a telephone company is to maintain the customer's access to 9-1-1 service for at least 14 days following the disconnection.

(7) If a customer who was disconnected for nonpayment of charges enters into a payment arrangement, the telephone company is to, upon request, reconnect the customer to basic local exchange service without requiring payment of the full amount due.

The bill requires an incumbent local exchange carrier to provide basic local exchange service on a reasonable and nondiscriminatory basis to all persons or entities in its service area requesting that service. But the bill permits an incumbent local exchange carrier to apply for a waiver from compliance with this requirement. The PUCO is to grant the waiver within 90 days of the application's filing if, upon investigation, it finds the waiver to be just, reasonable, and not contrary to the public interest. If the PUCO denies the waiver, the denial order must specify the reason for denial.

The bill also sets forth a limited exception to the requirement to provide basic local exchange service. An incumbent local exchange carrier is not obligated to construct facilities and provide basic local exchange service or any other service to the occupants of multitenant real estate (such as apartments, condominiums, and office buildings) if the owner, operator, or developer of the real estate permits only one provider of telecommunications service to install facilities or equipment during construction or development of the real estate, accepts incentives or rewards offered by a telecommunications provider that are contingent on exclusive provision of telecommunications service by that provider to the real estate occupants, or collects from the real-estate occupants any charges for the provision of telecommunications. If any of these apply to exempt the incumbent local exchange carrier from providing

service, the carrier is to notify the PUCO of that fact within 120 days of receiving knowledge of the reason for the exemption.

An incumbent local exchange carrier that receives a request to provide service under the circumstances described above involving multitenant real estate the carrier must, within 15 days of receiving the request, notify the requestor as to whether the carrier will provide the service. If the carrier declines the request, the notice is to describe the requestor's right to file a complaint, within 30 days after receipt of the notice, with the PUCO pursuant to the bill's complaint provisions (see "**Filing of complaints with PUCO**," below). In resolving such a complaint, the PUCO's determination is to be limited to whether any circumstance warranting an exemption, as described above exists. If the PUCO finds no reason for an exemption, the requestor's sole remedy is to be provision by the carrier of the requested service within a reasonable time. Otherwise, if a circumstance warranting an exemption is found to exist, the complaint must be dismissed.

The bill permits the PUCO to establish, by rule, a process for determining a necessary successor telephone company to provide service to the real estate described above when the circumstance for the exemption no longer exists.

The bill permits an incumbent local exchange carrier to increase its rates for basic local exchange service by not more than $1.25 above the rates in effect on the bill's effective date. The bill limits the carrier to increasing rates by this amount only once during the first 12 months after the bill's effective date and upon not less than 30-days' notice to the PUCO and affected customers. If the carrier increased rates within 12 months prior to the bill's effective date, the $1.25 increase may not be instituted until 12 months after the date of the other increase. In subsequent years, the bill permits an incumbent local exchange carrier to increase its rates for basic local exchange service by not more than $1.25 above the basic local exchange service rates in effect at the end of the preceding 12-month period. To make this increase, the carrier must provide not less than 30-days' notice to the PUCO and affected customers. The bill prohibits banking of permissible rate increases.

The bill also provides that the rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service are to be tariffed in the manner prescribed by the PUCO.

Lifeline service

(R.C. 4927.11)

The bill requires an incumbent local exchange carrier that is eligible under federal law to receive universal service support to implement lifeline service

throughout the carrier's traditional service area for eligible residential customers. The bill specifies that lifeline service is to consist of all of the following:

(1) Flat-rate, monthly, primary access line service with touch-tone service, at a recurring discount to the monthly basic local exchange service rate that provides for the maximum contribution of federally available assistance;

(2) A waiver of all nonrecurring service order charges for establishing service, not more than once at the same address in a 12-month period;

(3) Free blocking of toll service, 900 service, and 976 service.

The bill permits a carrier to offer to lifeline service customers any other services and bundles or packages of service at prevailing prices, subject to the carrier's credit requirements.

The bill requires the carrier to offer special payment arrangements to lifeline service customers that have past-due bills for regulated local service charges, with the initial payment not to exceed $25 before service is installed, and the balance for regulated local service charges to be paid over six, equal, monthly payments. Lifeline service customers with past due bills for toll service charges are to have toll restricted service until the past-due toll service charges have been paid or until the customer establishes service with another toll service provider.

The bill requires that all other aspects of the carrier's state-specific lifeline service be consistent with federal requirements. And it prohibits a carrier from being required to perform any outreach, marketing, or promotion of lifeline service over and above that which is federally required.

The bill requires that the rates, terms, and conditions for the carrier's lifeline service are to be tariffed in the manner prescribed the PUCO.

The bill specifies that eligibility for lifeline service is to be based on whether the person's household income is at or below 150% of the federal poverty level[15]--either by participation in a federal or state assistance program or by other verification. The PUCO is required under the bill to work with the appropriate state agencies that administer federal or state law--income assistance programs and with carriers to get information to verify eligibility and to enroll eligible persons for lifeline service.

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[15] The bill defines "federal poverty level" to mean the income level represented by the poverty guidelines as revised annually by the U.S. Department of Health and Human Services in accordance with federal law for a family size equal to the size of the family of the person whose income is being determined. (R.C. 4927.01.)

Carriers are to provide written notification if they determine that a person is not eligible for lifeline service. The person is to have an additional 30 days to prove eligibility. Carriers are to provide written notification if a customer's lifeline service is to be terminated due to failure to submit documentation for continued eligibility. On this case, the carrier is to provide the customer an additional 60 days to submit acceptable documentation or dispute the carrier's findings.

The bill permits incumbent local exchange carriers and eligible telecommunications carriers to recover any lifeline service discounts and other lifeline service expenses prescribed by PUCO rule that are not recovered through federal or state funding. This recovery is to be done through the establishment of a surcharge, applied to end users, other than lifeline customers, of the carrier's service. The bill permits the PUCO to review the surcharge, which is to be established to prevent overrecovery by the carrier.

Toll service provider discounts

(R.C. 4927.12)

The bill permits the PUCO to adopt rules requiring any telephone company that is a telephone toll service provider to offer discounts for operator-assisted and direct-dial services for persons with communication disabilities.[16]

Carrier access

(R.C. 4927.13)

The bill requires that the rates, terms, and conditions for carrier access,[17] N-1-1 services, including 9-1-1 service, pole attachments and conduit occupancy, pay telephone access lines, toll presubscription, and telecommunications relay service provided in Ohio by a telephone company be approved and tariffed in the manner prescribed by PUCO role and be subject to the applicable laws, including PUCO and FCC rules, regulation, and orders.

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[16] The bill defines "telephone toll service" to mean telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with customers for exchange service. (R.C. 4927.01.)

[17] The bill revises the definition of "carrier access" and removes it from inclusion as basic local exchange service. Under the bill, carrier access is defined as "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 and includes special access."

The bill permits the PUCO to order changes in a telephone company's rates for carrier access in Ohio. But the bill prohibits the PUCO from requiring a telephone company to reduce its rates for carrier access that are in effect on the bill's effective date except on a revenue-neutral basis. The bill also specifies that any resulting rate changes necessary to comply with these provisions are to be in addition to any $1.25 rate adjustment authorized under the provisions described above. The bill authorizes the PUCO to address carrier access policy and to create and administer mechanisms for carrier access reform, including high cost support.

Unbundling of network elements

(R.C. 4927.14; 4505.041 (repealed))

The bill prohibits the PUCO from establishing any requirements for the unbundling of network elements, for the resale of telecommunications service, or for network interconnection that exceed or are inconsistent with or prohibited by federal law, including federal regulations. The bill also prohibits the PUCO from establishing pricing for unbundled elements, resale, or interconnection that is inconsistent with or prohibited by federal law, including federal regulations. These provisions are relocated from Chapter 4905. in current law.

Notice of material change in rates

(R.C. 4927.15)

The bill requires a telephone company to provide at least 15-days' advance notice to its affected customers of any material change in the rates, terms, and conditions of a service and any change in the company's operations "that are not transparent to customers and may impact service."

Telephone instruments for inmates

(R.C. 4927.16)

The bill authorizes the PUCO to adopt rules regarding the rates, terms, and conditions of intrastate telecommunications service initiated from a telephone instrument set aside for use by inmates or juvenile offenders by authorities of a secured correctional facility.

PUCO investigations of telephone companies

(R.C. 4927.17)

The bill permits the PUCO to investigate or examine the books, records, or practices of any telephone company, but only to the extent of the PUCO's jurisdiction over the company under the new regulatory scheme established by the bill. The bill specifies, however, that subject to that limitation, the PUCO (through the commissioners or authorized inspectors or employees) may examine the books, records, contracts, documents, and papers of the company for any purpose incidental to the PUCO's authority, compel the production of the books, records, contracts, documents, and papers by subpoena duces tecum, and compel the attendance of witnesses to give evidence.

Filing of complaints with PUCO

(R.C. 4905.26 and 4927.18; Section 4)

Current law sets forth a procedure for the filing and hearing of complaints by subscribers to any telephone exchange, or by the legislative authority of any municipal corporation served by a telephone company. Such complaints are described in current law as alleging that any regulation, measurement, standard of service, or practice affecting or relating to any service furnished by the telephone company, or in connection with such service is, or will be, in any respect unreasonable, unjust, discriminatory, or preferential, or that any service is, or will be, inadequate or cannot be obtained.

The bill repeals these provisions and replaces them;[18] specifically the bill permits any person to file a complaint with the PUCO alleging that any rate, practice, or service of the company is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any of the bill's provisions or a PUCO rule or order adopted under those provisions. It also permits the PUCO to initiate such a complaint against a telephone company other than a wireless service provider. Further, the bill permits any dispute between telephone companies, between telephone companies and wireless service providers, or between wireless service providers that is within the PUCO's jurisdiction under the bill's provisions to be brought by a filing pursuant to this complaint-filing procedure.

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[18] The bill does provide, however, that any complaint filed under the current law (R.C. 4905.26) that is pending on the act's effective date must be determined by the PUCO under the law as it existed immediately preceding the effective date. (Section 4 of the bill.)

The bill directs that if it appears that reasonable grounds for complaint are stated, the PUCO is to arrange a hearing and notify complainants and the telephone company or wireless service provider. The bill requires that the parties to the complaint be entitled to be heard, represented by counsel, and to have a process for the attendance of witnesses.

If the PUCO, after the hearing, finds against the party complained of, the PUCO may do either or both of the following:

(1) Determine, to the extent authorized by the bill's provisions, the rate, practice, or service to be adopted and observed, including any appropriate remedy for a complaint;

(2) Assess a forfeiture of not more than $10,000 for each violation or failure. In the case of a forfeiture, each day's continuance of the violation or failure is to be a separate offense, and all occurrences of a violation or failure on each such day are to be deemed one violation. All forfeitures are to be cumulative, and the bill specifies that a suit for and recovery of one does not bar the recovery of any other. Forfeitures are to be deposited into the state treasury to the credit of the General Revenue Fund. The Attorney General, as directed by the PUCO, is to commence actions to recover forfeitures in the court of common pleas of any county in which the party complained of is located.

The bill also permits the PUCO to suspend, rescind, or conditionally rescind the certification of a telephone company under either of the following circumstances:

(1) If the PUCO determines, after notice and an opportunity for hearing, that the telephone company has failed to comply with the annual reporting and assessment requirement for PUCO operations;

(2) The PUCO determines in that the telephone company has willfully or repeatedly failed to comply with any other applicable state or federal law.

The bill specifies that the PUCO has authority to order credits to a customer only in response to a complaint determined in accordance with these provisions governing the complaint procedure.

Upon request of the PUCO, the bill permits the Attorney General to prosecute an action or proceeding as directed by the PUCO alleging any violation or noncompliance of the type of which a person may allege in a complaint under these provisions.

Annual reports

(R.C. 4905.14)

Current law requires "public utilities" to file an annual report with the PUCO. The bill removes a provision in that law authorizing the PUCO to require a telephone company to file supplemental reports of each exchange area it owns or operates and removes the requirement that the PUCO require such supplemental report if 15% of the subscribers of an exchange request it. The bill also provides that for wireless service providers, the information required in the report is to be limited to the information necessary to calculate the PUCO and OCC assessments. The bill also states that the PUCO must protect any confidential trade secret protection in the wireless service provider's report.

Telephone company lines and facilities

(R.C. 4931.02 to 4931.05)

Current law permits telegraph companies to construct, own, use, and maintain telegraph lines and to enter on and appropriate land for its lines. The bill permits telephone companies to construct, own, use, and maintain telephone lines and facilities and to enter on and appropriate land for its lines and facilities. The bill requires that a telephone company's lines and facilities not unreasonably interfere with the practical uses of the property on which they are located. It also requires a telephone company to repair defective lines and facilities, which repairs are to be consistent with reasonable business practices and applicable industry standards.

The bill also removes related references to telegraph lines (see "**Telegraph companies**," below).

Protection of trade secrets

(R.C. 4901.12)

Current law states that except as provided in Ohio's open records law and as consistent with the purposes of Title 49 of the Revised Code, all proceedings of the PUCO and all documents and records in its possession are public records. The bill adds that in protecting trade secret and other confidential information from public disclosure, the PUCO may not establish an expiration date for this protection. And it must require any party seeking public disclosure of any trade secret or other confidential information to establish that it should no longer be subject to the protection.

Filing of contracts telephone management, service, or operating companies

(R.C. 4905.16)

Current law requires that every public utility shall file with the PUCO, when and as required by the PUCO, a copy of any contract, agreement, or arrangement, in writing, with any other public utility relating in any way to the construction, maintenance, or use of its plant or property, or to any service, rate, or charge. The bill preserves this provision, but removes a provision of current law that states that unless otherwise ordered by the PUCO each telephone company must file (with the PUCO) a copy of any contract, agreement, note, bond, or other arrangement entered into with any telephone management, service or operating company.

Depreciation or deferred maintenance accounts

(R.C. 4905.18)

The bill removes a provision of current law that requires every telephone company to carry a proper and adequate depreciation or deferred maintenance account.

Filing of rate schedules

(R.C. 4905.30)

Current law requires every public utility to print and file with the PUCO schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. The bill specifies that this requirement applies to a telephone company only regarding rates, joint rates, tolls, classifications, charges, rules, and regulations established pursuant to R.C. 4905.71 (charges for use of attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of attachments in conduit duct space), 4927.10 ($1.25 rate increases), 4927.11 (lifeline service), 4927.12 (discounts for operator-assisted and direct-dial services for persons with communication disabilities), 4927.13 (carrier access and N-1-1 services), 4927.16 (inmate telephone instruments), and 4931.47 (9-1-1 service).

Approval for acquisitions and mergers

(R.C. 4905.402)

The bill prohibits any person from acquiring control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company without the prior approval of the PUCO. To obtain approval the person must apply to the PUCO and demonstrate that the acquisition will not be contrary to the

public interest. Under current law, a person desiring to acquire a telephone company must gain PUCO approval by showing that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. Under the bill, if the PUCO considers a hearing necessary, it may, not more than 20 days after the filing of the application, fix a time and place for a hearing. If the PUCO is satisfied that approval of the application will not be contrary to the public interest, the bill requires it to approve the application. If the PUCO fails to issue an order disapproving the application within 30 days of the filing of the application, or within 20 days of the conclusion of a hearing if one is held, or in any event within 60 days after the filing of the application, the application is to be deemed approved.

The bill repeals a section of current law (R.C. 4905.49) authorizing consolidations between telephone companies if the consolidation will promote public convenience and will furnish the public adequate service for a reasonable rate, rental, toll, or charge. The bill instead prohibits a domestic telephone company from merging with another domestic telephone company unless the merging companies obtain the prior approval of the commission. Merger applications are to be handled in the same manner as acquisition applications.

The bill gives the PUCO authority to adopt rules governing the mergers described above and mergers of domestic electric utilities and their holding companies. Additionally, the bill applies existing law governing enforcement actions regarding those merger laws by the Ohio Attorney General, and jurisdiction of Ohio courts to hear those actions, to any merger rules adopted by the PUCO.

Repeals consistent with PUCO limited jurisdiction over telephone company service quality

Inadequate service and service standards

(R.C. 4905.23 to 4905.25)

The bill repeals current law that requires that it be deemed prima facie evidence of inadequate service by any telephone company, except one serving less than 500 telephones, for more than ten persons, parties, or subscribers to be served on any one telephone line. It also repeals current law that permits the PUCO to make investigations as it deems necessary and ascertain and prescribe reasonable standards of telephone service. The bill also repeals provisions of current law that authorize a telephone company to (1) apply to exercise a right of franchise or render service in an area of inadequate service or (2) merge, consolidate, or integrate to provide service in an area of inadequate service. Along the same lines, the bill repeals provisions of current law that allow for petitions for a change in service or for service in an area without

service. Provisions governing the prohibition against providing service in areas of adequate service and provisions regarding continuing operation to provide service in areas of inadequate service are also repealed.

Ordering of repairs

(R.C. 4905.381)

The bill repeals a provision of current law that permits the PUCO to order repairs and improvements in telephone service.

Power to form continuous lines

(R.C. 4905.50)

The bill repeals a provision of current law that permits the PUCO to require any two or more telephone companies whose lines or wires form a continuous line of communication, or could be made to form a continuous line of communication, between different localities that cannot be communicated with or reached by the lines of either company alone, where service is not already established, to establish and maintain through lines between two or more such localities.

Interference with telegraph or telephone communication

(R.C. 4931.28 and 4931.29)

The bill repeals a provision of current law that prohibits the willful and malicious interference with a telegraph or telephone wire, as well as the reading or copying of a telegraphic message or communication from or upon a telegraph or telephone line, wire, or cable. The bill also repeals a provision of current law that prohibits a person connected with a telephone company from willfully divulging a private telephone message.

Party lines yielded in emergencies

(R.C. 4931.30)

The bill repeals a provision of current law requiring the yielding of party lines in emergencies.

Threat and harassment

(R.C. 4931.31)

The bill repeals a provision of current law that prevents threat or harassment over the telephone.

Inter-utility transactions and merger petition denial

(R.C. 4905.491)

The bill repeals a provision of current law that allows the PUCO to dismiss petitions for approval of transactions between utilities and mergers due to default of compliance with any PUCO order.

Telegraph companies

(R.C. 324.01, 324.03, 1332.24, 4901.01, 4901.11, 4903.01, 4905.03, 4905.12, 4905.20, 4905.21, 4905.58, 4905.59, 4905.71, 4907.01, 4907.14, 4907.30, 4909.01, 4909.02, 4909.03, 4909.17, 4921.01, 4923.01, 4931.06, 4931.07, 4931.12 to 4931.19, 4931.21, 4931.22, 4931.25 to 4931.28, 4933.14, 5515.01, 6101.17, and 6115.21)

The bill removes references in and provisions of current law relating to telegraph companies and their regulation by the PUCO.

Technical change to definition sections in Title 49

(R.C. 4901.01, 4903.01, 4905.01, 4907.01, 4909.01, 4911.01, 4921.01, and 4923.01)

The bill amends certain definition sections applicable to certain chapters of the Revised Code to remove defined terms that are not used in those chapters. The bill also makes various technical changes to remaining terms.

COMMENT

1. The wording of the bill might be unclear as to the scope of PUCO authority and the types of companies and services it can regulate. This conclusion is reached on a number of grounds. First, the bill's revised telecommunication law declares that the PUCO has jurisdiction over telecommunications service as described in that law. "Telecommunications" and "telecommunications service" are broadly defined in the revised law. The terms arguably could include "advanced services," information services, broadband service, and not-yet-commercial services, notwithstanding that the bill excludes those services as public utilities, since the exclusion applies for the purpose of R.C. Chapter 4905. The absence of a clear statement that those services are not

subject to regulation under the bill's provisions allows a possibility for their regulation under the new Chapter 4927., by virtue of the statute's declaration that the PUCO has jurisdiction over "telecommunications services" and by virtue of the statute's revised state policy. That is, it is not inconceivable that a state policy could be proffered as sole authority for a regulatory action.

Secondly, the wording of the bill's declaration that the PUCO has jurisdiction over telecommunications service and telephone companies as described in R.C. Chapter 4927. may raise a question as to why only telephone companies are referred to and not other providers of telecommunications service.

Third, the bill lacks clarity regarding how the authority granted to the PUCO under R.C. Chapter 4927. relates to the PUCO's authority elsewhere under Title 49, particularly R.C. Chapters 4905. and 4909. Lack of clarity is evident even for telephone companies under new R.C. Chapter 4927. R.C. 4927.03(D) states that, for purposes of the PUCO's authority under Chapter 4927., specific sections of R.C. Chapters 4903. and 4905. do not apply to a telephone company, "except *to the extent necessary* for the" PUCO to carry out Chapter 4927. The provision does give the PUCO discretion to determine when the named 4903. and 4905. sections will apply to a telephone company. However, a provision stating the certain sections do not apply is ambiguous as to the applicability of all the provisions of those chapters *not* named. That is, a statement that named sections do not apply can, on its face, be read two ways: (1) that all of R.C. Chapters 4903. and 4905. apply but the named sections will apply only if the PUCO determines necessary or (2) that none of R.C. Chapter 4903. or 4905. apply, except that the PUCO can apply the named sections when it determines necessary. It is possible that an analysis of all the bill's amendments to certain provisions in those chapters might refute the second conclusion if they definitively communicate intent for the continued applicability of those chapters' provisions. But a surer manner of reaching clarity might be the addition of a statement like (1) or (2) immediately above, depending on the desired policy.

2. The effect of the definition of "telephone company" in R.C. 4931.01 of the bill is ambiguous, however, regarding whether the bill intends to limit the authority granted by R.C. 4931.02, 4931.04, and 4931.06 only to telephone companies as so defined. This is because R.C. 4931.11 (renumbered by the bill as R.C. 4931.05) continues to grant the authority of those sections to "*any* company organized to transact a telephone or communications business."

3. The bill is ambiguous regarding whether this provision intends to confer authority for the PUCO to adjudicate under its complaint authority disputes between telephone companies and internet protocol-enabled service providers, given that the complaint authority of the new law in R.C. 4927.18 refers only to disputes between

telephone companies, between wireless service providers, and between telephone companies and wireless service providers.

HISTORY

ACTION	DATE
Introduced	08-27-09

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