PUBLIC UTILITIES COMMISSION

Telecommunications

Withdrawal or abandonment of basic local exchange service

- Would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if the carrier were to withdraw the interstate-access component of its BLES in accordance with an order of the Federal Communications Commission.

- Requires a carrier withdrawing or abandoning BLES to give 120 days' notice to the Public Utilities Commission of Ohio (PUCO) and affected customers.

Voice service for customers who petition the PUCO (or are identified)

- Permits a residential customer who will be unable to obtain reasonable and comparatively priced voice service upon the withdrawal or abandonment of BLES to petition the PUCO to find a willing provider of such service, and permits a collaborative process at the PUCO to identify customers in similar positions.

- Permits the willing provider to use any technology or service arrangement to provide the voice service.

- Permits the PUCO to order the withdrawing or abandoning carrier to provide a reasonable and comparatively priced voice service to a customer described above for one year at the customer's residence if, after an investigation, no willing provider is identified.

- Permits the carrier subject to an order to provide the voice service using any technology or service arrangement.

- Permits the order described above to be extended for one additional year if no alternative reasonable and comparatively priced voice service is available, upon further evaluation.

- Permits the PUCO, at the end of the second year, to issue a new order under which the carrier must *continue* to provide a reasonable and comparatively priced voice service to the customer (perhaps no longer at the customer's residence) if no alternative reasonable and comparatively priced voice service is available.

- Permits a carrier subject to the new order to provide the voice service using any technology or service arrangement.

Transition to an Internet-protocol network

- Requires the PUCO to use its appropriation in part to plan for the transition from the current public switched telephone network to an Internet-protocol network.

- Requires the PUCO to establish a collaborative process with incumbent and competitive local exchange carriers, the Office of the Ohio Consumers' Counsel, and other invited members to focus on the Internet-protocol-network transition process and related consumer issues.

Existing carrier agreements not affected

- Ensures that an incumbent local exchange carrier that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy.

- States that the bill does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.

Intermodal equipment

- Grants the PUCO the authority to regulate intermodal equipment providers and requires the PUCO to adopt rules applicable to the use and interchange of intermodal equipment (e.g. a semi-trailer transporting a ship container).

- Defines "intermodal equipment," "intermodal equipment provider," and related terms the same as those terms are defined in federal motor carrier safety rules.

Broadened subpoena power relating to motor carriers

- Broadens PUCO subpoena power, currently limited to the production of documents and other materials relating to hazardous materials transportation, by expanding its application to the production of all books, contracts, records, and documents relating to compliance with motor carrier law and rules.

Increase of pipeline safety forfeitures

- Increases maximum pipeline safety forfeitures to $200,000 per day and $2 million in the aggregate for a related series of violations or noncompliances.

Telecommunications

(R.C. 4905.71, 4927.01, 4927.02, 4927.07, 4927.10, 4927.101, 4927.11, and 4927.15; Sections 363.20, 363.30, and 749.10)

Withdrawal or abandonment of basic local exchange service

The bill would lift the current prohibition against an incumbent local exchange carrier withdrawing or abandoning basic local exchange service (BLES) in an exchange area if:

(1) The Federal Communications Commission (FCC) allows the carrier to withdraw the interstate-access component of its basic local exchange service;

(2) The carrier withdraws that component in the exchange area; and

(3) The carrier gives at least 120 days' prior notice to the Public Utilities Commission (PUCO) and to its affected customers.

Along the same lines, if (1) and (2) above occurred and the notice requirement was met, the bill would relieve the carrier of its carrier-of-last-resort obligation with regard to that exchange area. The carrier-of-last-resort obligation is the requirement that an incumbent local exchange carrier must provide BLES to all persons or entities in its service area requesting BLES (and that BLES must be provided on a reasonable and nondiscriminatory basis).

Under current law, there are also customer-service requirements for the provision of BLES, such as requirements for service installation and reliability. These requirements would not apply to a carrier's service in an exchange area where the carrier withdraws or abandons BLES under the bill, since the requirements apply only to the provision of BLES.[123] The bill expressly states that any "voice service" to which customers are transitioned following the withdrawal of BLES is *not* BLES. Therefore, voice service would not be subject to any requirements governing BLES. "Voice service" is defined as including "all of the applicable functionalities" described in federal regulations. These regulations describe eligibility requirements for federal universal service support in rural, insular, and high-cost areas. The regulations require the provision of voice grade access to the public switched network or its functional equivalent, minutes of use for local service provided at no additional charge to end

[123] R.C. 4927.08, not in the bill.

users, access to emergency service, and toll limitation services to qualifying low-income consumers.[124]

Terminology explained

"Incumbent local exchange carrier" (ILEC)

An incumbent local exchange carrier (commonly called an "ILEC") is, under continuing law, the local exchange carrier that, on February 8, 1996 (the date of enactment of the federal Telecommunications Act of 1996), (1) provided telephone exchange service in an area and (2) was deemed to be a member of the Exchange Carrier Association under federal regulations or, since February 8, 1996, became a successor or assign of a member of the Exchange Carrier Association. According to the PUCO, as of 2012 there were 43 ILECs in Ohio.[125]

"Interstate-access component"

The bill defines "interstate-access component" as the portion of carrier access that is within the jurisdiction of the FCC. "Carrier access" is defined under continuing law 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.

"Basic local exchange service"

The bill defines BLES as 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 such services over the primary access line of service, which in both cases are not bundled or packaged services, that enables the customer to originate or receive voice communications within a local service area as that area existed on September 13, 2010, or as that area is changed with the PUCO's approval. BLES includes services such as local dial tone service, flat-rate telephone exchange service (for residential end users), touch tone dialing service, access to and usage of 9-1-1 services, and other basic services.

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[124] 47 C.F.R. 54.101(a).

[125] "Telephone Service Areas in Ohio: 2012," available at www.puco.ohio.gov/puco/index.cfm/utility-maps/#sthash.DlRcF2R6.dpbs (click the link for "8.5 x 11 (PDF)" under "Telephone Maps.")

PUCO process for identifying providers of voice service

If a residential customer receives notice of a BLES withdrawal or abandonment, and the customer will be unable to obtain "reasonable and comparatively priced" voice service upon the withdrawal or abandonment, the bill permits the customer to petition the PUCO.

The bill requires the PUCO to define "reasonable and comparatively priced voice service" to include service that provides voice grade access to the public switched network or its functional equivalent, access to 9-1-1, and that is **competitively priced, when considering all the alternatives in the marketplace and their functionalities**. The language in bold is the more crucial provision. The other language is arguably redundant because the bill's definition of "voice service" already includes, through reference to federal regulations, voice grade access to the public switched network or its functional equivalent and access to emergency service (see "**Withdrawal or abandonment of basic local exchange service**," above).

The petition must be filed not later than 90 days prior to the effective date of the withdrawal or abandonment. The PUCO must then issue an order disposing of the petition not later than 90 days after the petition's filing. If the PUCO determines after an investigation that no reasonable and comparatively priced voice service will be available to the customer at the customer's residence, the PUCO must attempt to identify a willing provider of a reasonable and comparatively priced voice service. The willing provider may utilize any technology or service arrangement to provide the voice service.

ILECs may be ordered to provide voice service

If no willing provider is identified under the process described above, the PUCO may order the withdrawing or abandoning ILEC to provide a reasonable and comparatively priced voice service to the customer at the customer's residence for 12 months. The ILEC may utilize any technology or service arrangement to provide the voice service.

The PUCO must evaluate, during any 12-month period in which an ILEC has been ordered to provide a reasonable and comparatively priced voice service, whether an alternative reasonable and comparatively priced voice service exists for the affected customer. If no alternative voice service is available, the PUCO may extend the order for one additional 12-month period.

ILECs may be ordered to continue to provide voice service

After an ILEC has been ordered to provide voice service for 12 months and the order has been extended for an additional 12 months, the bill permits the PUCO to order the ILEC to *continue* to provide a reasonable and comparatively priced voice service to the affected customer under a new, distinct order. Under this new order, the ILEC would still be required to provide voice service using any technology or service arrangement, but it appears that the ILEC would no longer be required to provide service at the customer's residence. This is not explicit in the bill. But the lack of the phrase "at the customer's residence" is the only significant difference between the language governing the first order and the new order. (See the table below for a comparison of the two provisions.) It is also unclear how, under the new order, the service could be provided to a customer without being provided at the customer's residence.

Language comparison	
Original order	**New order**
"the withdrawing or abandoning carrier to provide a reasonable and comparatively priced voice service to the customer **at the customer's residence**" (R.C. 4927.10(B)(1)(b))	"the withdrawing or abandoning carrier to **continue** to provide a reasonable and comparatively priced voice service to the **affected** customer" (R.C. 4927.10(B)(2))

Similar to the original order, the new order may be issued if, at the end of the 12-month extension period, no alternative reasonable and comparatively priced voice service is available.

Collaborative process to address the network transition

The bill requires the PUCO, not later than 90 days after the provision's effective date, to establish a collaborative process to address the Internet-protocol-network transition, with all of the following:

- ILECs;
- Any competitive local exchange carriers that provide BLES and are affected by the transition;
- The Office of the Ohio Consumers' Counsel;
- At the invitation of the PUCO, other interested parties and members of the General Assembly.

The collaborative process must focus on the Internet-protocol-network transition processes underway at the FCC and the issues of universal connectivity, consumer protection, public safety, reliability, expanded availability of advanced services, affordability, and competition. The process must ensure that public education concerning the transition is thorough.

The process must include a review of the number and characteristics of BLES customers in Ohio, an evaluation of what alternatives are available to them, including both wireline and wireless alternatives, and the prospect for the availability of alternatives where none "currently" exist. The process must also embark on an education campaign plan for those customers' eventual transition to advanced services.

If the collaborative process identifies residential BLES customers who will be unable to obtain "voice service" upon the withdrawal or abandonment of basic local exchange service (the bill does not use the phrase "reasonable and comparatively priced" here), the PUCO may find those customers to be eligible for the process described above (see "**PUCO process for identifying providers of voice service**") regardless of whether they have filed petitions with the PUCO. The bill states that any customers identified through the collaborative process must be treated as though they filed timely petitions under the bill's provisions.

The collaborative process must, pursuant to the PUCO's rules, respect the confidentiality of any data shared with those involved in the process.

Transition to an Internet-protocol network

The bill requires the PUCO to use its appropriation for Utility and Railroad Regulation in part to plan for the transition, consistent with the directives and policies of the FCC, from the current public switched telephone network to an Internet-protocol network that will stimulate investment in the Internet-protocol network in Ohio and that will expand the availability of advanced telecommunications services to all Ohioans. The transition plan must include a review of statutes or rules that may prevent or delay an appropriate transition. The bill requires the PUCO to report to the General Assembly on any further action required to be taken by the General Assembly to ensure a successful and timely transition.

Rulemaking

The bill requires the PUCO, not later than 180 days after the effective date of the requirement, to adopt rules to implement the bill's provisions related to the withdrawal or abandonment of BLES, and to bring its rules into conformity with the relevant provisions of the bill. Rules adopted or amended must include provisions for reasonable customer notice of the steps to be taken during, and the actions resulting

from, the transition plan described above (see "**Transition to an Internet-protocol network**"). Rules adopted or amended must be consistent with the FCC's rules.

If the PUCO fails to comply with these rulemaking requirements before the FCC adopts an order permitting the withdrawal of the interstate-access component of BLES, the bill states that any rule of the PUCO that is inconsistent with that order shall not be enforced.

Rights and obligations not affected by the bill

Contractual obligations and federal rights and obligations

The bill states that it does not affect any contractual obligation, including agreements under the federal Telecommunications Act of 1996, as amended, or any right or obligation under federal law or rules.

Carrier access, pole attachments, and conduit occupancy

The bill ensures that an ILEC that withdraws or abandons BLES under the bill would still be subject to the PUCO's oversight of the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy. Current law on this subject generally requires that the rates, terms, and conditions for carrier access, pole attachments, and conduit occupancy, provided in Ohio by a telephone company *that is a public utility*, be approved and tariffed as prescribed by the PUCO. The bill adds that this requirement also applies when an *ILEC* provides carrier access, pole attachments, or conduit occupancy. The reason for the addition is that an ILEC is not a public utility with respect to its provision of certain advanced and newer services. So, if an ILEC were to withdraw or abandon BLES and instead provide only an advanced service, that ILEC would no longer be a public utility. Therefore, without the bill's addition, that ILEC could be considered no longer subject to the PUCO's regulation of carrier access, pole attachments, and conduit occupancy.

The bill makes parallel changes in two other provisions of law governing pole attachments and conduit occupancy:

- The bill requires *ILECs*, in addition to telephone companies that are public utilities, to permit pole attachments and conduit occupancy upon reasonable terms and conditions and the payment of reasonable charges.

- The bill requires an *ILEC*, in addition to a telephone company that is a public utility, to obtain PUCO approval before withdrawing a tariff for pole attachments or conduit occupancy, or abandoning the service of providing pole attachments or conduit occupancy.

Finally, the bill states that its provisions related to the withdrawal or abandonment of BLES do not affect carrier-access requirements under Ohio law, or rights or obligations under Ohio law governing pole attachments and conduit occupancy.[126]

Intermodal equipment

(R.C. 4905.81, 4923.04, and 4923.041)

Providers

The bill expressly authorizes the PUCO to regulate the safety of operation of each intermodal equipment provider, in addition to regulating the safety of operation of each motor carrier as required in current law. Though not explained in the bill, intermodal equipment is generally considered equipment for combination transport where the freight is not handled when it changes modes of transport. A semi-trailer transporting a ship container would be an example.

Rules

The bill also requires the PUCO to adopt rules applicable to the use and interchange of intermodal equipment.

Definitions

"Intermodal equipment," "intermodal equipment provider," and related terms are given the same definitions in the bill as those terms currently have in federal rules. Intermodal equipment means trailing equipment that is used in the intermodal transportation of containers over public highways in interstate commerce, including trailers and chassis. An intermodal equipment provider is any person that interchanges intermodal equipment with a motor carrier pursuant to a written interchange agreement or has a contractual responsibility for the maintenance of the intermodal equipment. Interchange is the act of providing intermodal equipment to a motor carrier pursuant to an intermodal equipment interchange agreement for the purpose of transporting the equipment for loading or unloading by any person or repositioning the equipment for the benefit of the equipment provider. Interchange does not include the leasing of equipment to a motor carrier for primary use in the motor carrier's freight hauling operations.[127]

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[126] R.C. 4905.02(A)(5), not in the bill.

[127] 49.C.F.R. 390.5.

Broadened subpoena power relating to motor carriers

The bill broadens the PUCO's subpoena power relating to motor carriers. Under the bill, the PUCO may issue a subpoena to compel the production of all books, contracts, records, and documents that relate to compliance with the state's motor carrier laws and rules. Current law limits the power to compelling the production of all books, contracts, records, and documents that relate to the transportation and offering for transportation of hazardous materials.

Pipeline safety forfeitures

(R.C. 4905.95)

Updates the maximum forfeitures for pipeline safety violation or noncompliance consistent with federal law: $200,000 limit for each day of a violation or noncompliance and $2 million limit for a related series of violations or noncompliances.[128] The limits in existing law are $100,000 and $1 million, respectively.

[128] 49 C.F.R. 190.223(a).