

**As Passed by the House**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Sub. H. B. No. 218**

**Representatives Daniels, Taylor, McGregor, Bupp, J. Stewart, Gibbs,  
Raussen, Cassell, Uecker, T. Patton, Buehrer, Webster, Aslanides, Widener,  
Martin, Seitz, Flowers, Carmichael, G. Smith, Schlichter, Schneider, Coley,  
White, Reinhard, C. Evans, Collier, Hood, Hartnett, Latta, Strahorn, Distel,  
Hagan, Wagoner, Calvert, Carano, Peterson, Setzer**

—

**A BILL**

To amend sections 4905.04, 4927.02, 4927.03, and 1  
4927.04 and to enact sections 4905.041 and 2  
4905.042 of the Revised Code to revise state 3  
telecommunications policy, authorize the Public 4  
Utilities Commission to allow alternative 5  
regulation of basic local exchange service 6  
provided by larger companies, and specify the 7  
scope of Commission authority regarding wholesale 8  
telecommunications services, advanced services, 9  
and internet protocol-enabled services. 10

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4905.04, 4927.02, 4927.03, and 11  
4927.04 be amended and sections 4905.041 and 4905.042 of the 12  
Revised Code be enacted to read as follows: 13

**Sec. 4905.04.** (A) The public utilities commission is hereby 14  
vested with the power and jurisdiction to supervise and regulate 15  
public utilities and railroads, to require all public utilities to 16

furnish their products and render all services exacted by the 17  
commission or by law, and to promulgate and enforce all orders 18  
relating to the protection, welfare, and safety of railroad 19  
employees and the traveling public, including the apportionment 20  
between railroads and the state and its political subdivisions of 21  
the cost of constructing protective devices at railroad grade 22  
crossings. 23

(B) ~~Division~~ Subject to sections 4905.041 and 4905.042 of the 24  
Revised Code, division (A) of this section includes such power and 25  
jurisdiction as is reasonably necessary for the commission to 26  
perform ~~the acts of a state commission~~ pursuant to the 27  
"Telecommunications Act of 1996," Pub. L. No. 104-104, 110 Stat. 28  
56 federal law, including federal regulations, the acts of a state 29  
commission as defined in 47 U.S.C. 153. 30

Sec. 4905.041. (A) The public utilities commission shall not 31  
establish any requirements for the unbundling of network elements, 32  
for the resale of telecommunications services, or for network 33  
interconnection that exceed or are inconsistent with or prohibited 34  
by federal law, including federal regulations. 35

(B) The commission shall not establish pricing for such 36  
unbundled elements, resale, or interconnection that is 37  
inconsistent with or prohibited by federal law, including federal 38  
regulations, and shall comply with federal law, including federal 39  
regulations, in establishing such pricing. 40

Sec. 4905.042. Regarding advanced services or internet 41  
protocol-enabled service as defined by federal law, including 42  
federal regulations, the public utilities commission shall not 43  
exercise any jurisdiction over those services that is prohibited 44  
by, or that exceeds or is inconsistent with its jurisdiction 45  
under, federal law, including federal regulations. 46

Sec. 4927.02. (A) It is the policy of this state to:	47
(1) Ensure the availability of adequate basic local exchange service to citizens throughout the state;	48 49
(2) <del>Maintain</del> <u>Rely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market, to maintain</u> just and reasonable rates, rentals, tolls, and charges for public telecommunications service;	50 51 52 53
(3) Encourage innovation in the telecommunications industry;	54
(4) Promote diversity and options in the supply of public telecommunications services and equipment throughout the state;	55 56
(5) Recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate;	57 58 59
(6) <u>Consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to the jurisdiction of the public utilities commission;</u>	60 61 62 63
(7) <u>Not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services; and</u>	64 65 66
(8) <u>Protect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs.</u>	67 68 69
(B) The public utilities commission shall consider the policy set forth in this section in carrying out sections 4927.03 and 4927.04 of the Revised Code <u>and in reducing or eliminating the regulation of telephone companies under those sections as to any public telecommunications service.</u>	70 71 72 73 74

Sec. 4927.03. (A)(1) ~~Except as provided in division (B) of~~ 75  
~~this section, the~~ The public utilities commission, upon its own 76  
initiative or the application of a telephone company or companies, 77  
after notice, after affording the public and any affected 78  
telephone company a period for comment, and after a hearing if it 79  
considers one necessary, may, by order, exempt any such telephone 80  
company or companies, as to any public telecommunications service 81  
~~except, including~~ basic local exchange service, from any provision 82  
of Chapter 4905. or 4909., or sections 4931.01 to 4931.35 of the 83  
Revised Code or any rule or order adopted or issued under those 84  
~~chapters~~ provisions, or establish alternative regulatory 85  
requirements to apply to such public telecommunications service 86  
and company or companies; provided the commission finds that any 87  
such measure is in the public interest and either of the following 88  
conditions exists: 89

(a) The telephone company or companies are subject to 90  
competition with respect to such public telecommunications 91  
service; 92

(b) The customers of such public telecommunications service 93  
have reasonably available alternatives. 94

(2) In determining whether the conditions in division 95  
(A)(1)(a) or (b) of this section exist, factors the commission 96  
shall consider include, but are not limited to: 97

(a) The number and size of alternative providers of services; 98

(b) The extent to which services are available from 99  
alternative providers in the relevant market; 100

(c) The ability of alternative providers to make functionally 101  
equivalent or substitute services readily available at competitive 102  
rates, terms, and conditions; 103

(d) Other indicators of market power, which may include 104

market share, growth in market share, ease of entry, and the  
affiliation of providers of services.

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(3) To authorize an exemption or establish alternative  
regulatory requirements under division (A)(1) of this section with  
respect to basic local exchange service, the commission  
additionally shall find that there are no barriers to entry.  
Further, as to an exemption with respect to basic local exchange  
service, the commission shall not exempt a telephone company from  
sections 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 of the Revised Code.

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~~(B) As used in this division, "basic local exchange service"  
has the same meaning as in section 4927.01 of the Revised Code,  
but excludes within a local service area exchange areas to which  
extended area service is provided.~~

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~~The public utilities commission shall not approve or  
authorize any exemption from or modification of any provision of  
Chapter 4905. or 4909. of the Revised Code or any rule or order  
issued under them which would impair the exclusive right of any  
telephone company under those chapters, rules, or orders to  
provide basic local exchange service in the local service areas in  
which such service is provided by the company on the effective  
date of this section. Nothing in this division, however, shall be  
construed to require the withdrawal or prevent the offering by any  
telephone company of interexchange inward calling services  
terminating on a local exchange access line or interexchange  
services that employ dedicated access between the customer's  
premises and the telephone company's facilities merely because  
incidental use of such services by the customer for basic local  
exchange service is possible. Such offering shall not be promoted  
or marketed as basic local exchange service. Nothing in this  
division affects the commission's authority and duties under~~

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~~sections 4905.241 to 4905.25 of the Revised Code.~~

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~~(C)~~ In carrying out this section, the public utilities commission may prescribe different classifications, procedures, terms, or conditions for different telephone companies and for the public telecommunications services they provide, provided they are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any telephone company.

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~~(D)~~(C) The public utilities commission has jurisdiction over every telephone company providing a public telecommunications service that has received an exemption or for which alternative regulatory requirements have been established pursuant to this section. As to any such company, the commission, after notice and hearing, may abrogate or modify any order so granting an exemption or establishing alternative requirements if it determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest. No such abrogation or modification shall be made more than ~~eight~~ five years after the date an order granting an exemption or establishing alternative requirements under this section was entered upon the commission's journal, unless the affected telephone company or companies consent.

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~~(E)~~(D) The public utilities commission shall adopt such rules as it finds necessary to carry out this section. It shall adopt rules initially implementing the amendment of this section by H.B. No. 218 of the 126th general assembly within one hundred twenty days after the effective date of the amendment. In adopting those rules, the commission shall consider the establishment of elective alternative regulation unique to telephone companies having fewer than fifty thousand access lines.

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**Sec. 4927.04.** (A)(1) In considering an application pursuant to section 4909.18 of the Revised Code, the rates and charges for

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~~basic local exchange service or any other public~~ 168  
telecommunications service for which the public utilities 169  
commission has not provided an exemption or alternative regulatory 170  
requirements under section 4927.03 of the Revised Code may be 171  
established by the commission, upon its own initiative or the 172  
request of ~~the~~ an applicant telephone company, by a method other 173  
than that specified in section 4909.15 of the Revised Code, 174  
provided the commission finds the use of the alternative method of 175  
establishing rates and charges to be in the public interest and 176  
provided, in instances where the alternative method is proposed by 177  
the commission, the applicant consents. Alternative methods may 178  
include, but are not limited to, methods that maintain universal 179  
telephone service in the state; minimize the costs and time 180  
expended in the regulatory process; tend to assess the costs of 181  
any telecommunications service to the entity or service that 182  
causes such costs to be incurred; afford rate stability; promote 183  
and reward efficiency, quality of service, or cost containment by 184  
telephone companies; or provide sufficient flexibility and 185  
incentives to the telecommunications industry to achieve high 186  
quality, technologically advanced, and universally available 187  
telecommunications services at just and reasonable rates and 188  
charges. 189

(2) An application ~~which~~ that proposes an alternative method 190  
of establishing rates and charges ~~which~~ that could result in an 191  
increase in any rate or charge for ~~basic local exchange service or~~ 192  
any ~~other~~ public telecommunications service for which the public 193  
utilities commission has not provided an exemption or alternative 194  
regulatory requirements under section 4927.03 of the Revised Code 195  
~~without further action by the commission~~ shall be deemed, without 196  
further action by the commission, to be an application for an 197  
increase in rates and charges under section 4909.18 of the Revised 198  
Code, notwithstanding whether an immediate increase in rates and 199  
charges is proposed. 200

(3) An application pursuant to section 4909.18 of the Revised Code ~~which~~ that is not for an increase in rates and charges, but ~~which~~ that proposes an alternative method of establishing rates and charges for ~~basic local exchange service or any other~~ public telecommunications service for which the public utilities commission has not provided an exemption or alternative regulatory requirements under section 4927.03 of the Revised Code, shall include the exhibits specified in divisions (A) to (D) of section 4909.18 of the Revised Code, unless otherwise ordered by the commission. Notwithstanding any provision of section 4909.18 of the Revised Code to the contrary, after the date such application is filed, any person may file a request for hearing on the application. If it appears to the commission that the request sets forth reasonable grounds for holding a hearing, the commission shall set the matter for hearing and shall give notice of such hearing as provided in section 4909.18 of the Revised Code.

(B) Upon the application of any telephone company that is an incumbent local exchange carrier as defined in 47 U.S.C. 252(h) having fewer than ~~fifteen~~ fifty thousand access lines, the public utilities commission, by order, may exempt such company, with respect to any public telecommunications service it provides, from any provision of Chapter 4905. or 4909. of the Revised Code that is specified and requested in such application, except sections 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 of the Revised Code; or may establish alternative regulatory requirements to apply to such company and service, provided the commission finds that the alternative requirements are in the public interest.

(C) In carrying out this section, the public utilities commission may use different methods of establishing the rates and charges of different telephone companies, provided that the



methods are reasonable and do not confer any undue economic,	233
competitive, or market advantage or preference upon any telephone	234
company.	235
(D) The public utilities commission shall adopt such rules as	236
it finds necessary to carry out this section.	237
<b>Section 2.</b> That existing sections 4905.04, 4927.02, 4927.03,	238
and 4927.04 of the Revised Code are hereby repealed.	239
<b>Section 3.</b> The amendment of sections 4927.03 and 4927.04 of	240
the Revised Code by this act does not invalidate any rule adopted	241
or order issued by the Public Utilities Commission under those	242
sections and in effect prior to the effective date of the act.	243