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Final Analysis

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ACT SUMMARY

- Revises state-policy objectives for the provision of telecommunications service.
- Repeals the law governing alternative regulation of telephone companies and rescinds related Public Utilities Commission of Ohio (PUCO) rules.

PUCO jurisdiction over telecommunications

- Specifies that the PUCO, except as provided in the act and federal law, has no authority over an interconnected voice over internet protocol-enabled service or a telecommunications service (1) that is not commercially available on the act's effective date and (2) that employs technology that became available for commercial use after that date, unless the PUCO determines the exercise of authority is necessary for the protection, welfare, and safety of the public and adopts necessary regulations, and specifies that the Office of the Consumers' Counsel (OCC) has authority to assist and represent residential customers to the extent that the PUCO adopts those regulations.
- Makes consumer purchases of telecommunications services not commercially available on the act's effective date and that employ new technology subject to the Consumer Sales Practices Act (CSPA), notwithstanding any provision of the CSPA

to the contrary, and only if the PUCO does not exercise jurisdiction over such services.

- Provides that the PUCO does not have jurisdiction over wireless service, resellers of wireless service, or wireless service providers, except as pertaining to (1) telecommunications relay service, (2) 9-1-1 service, (3) certain penalties, and (4) carrier access policy and the creation and administration of mechanisms for carrier access reform, including high cost support.
- Provides that the PUCO has authority over wireless service and wireless service providers as follows, but only to the extent authorized under federal law: (1) to the extent the PUCO carries out (a) rights and obligations under the federal Telecommunications Act of 1996, (b) the authority to mediate and arbitrate disputes and approve agreements under the federal act, (c) administration of telephone numbers and number portability, (d) certification of telecommunications carriers eligible for universal-service funding under applicable federal law, and (e) administration of customer proprietary network information in applicable federal law, and (2) as provided under the new telecommunication provisions in the act pertaining to (a) registration of wireless service providers, (b) compliance with applicable PUCO orders, directions, and requirements, and (c) adjudication of disputes.
- Specifies that requirements regarding assessments supporting the PUCO and the OCC, as well as the filing of annual reports for assessments, apply to wireless service providers.
- Specifies that a number of statutes, many unchanged by the act, do not apply to telephone companies, including statutes pertaining to PUCO jurisdiction, service discrimination, accounting requirements, charging tariffed rates, the issuance of stocks, bonds, and notes, uniform pricing, and other statutes, unless necessary, in some cases, for the PUCO to enforce the provisions of the act.
- Specifies that, with certain exceptions, the new telecommunications provisions in the act do not prevent any public utility or railroad from granting property for public purposes.
- Redefines "public utility" to exclude internet protocol-enabled services, including voice over internet protocol services, and providers of advanced services, broadband service, information service, and any telecommunications service that is not commercially available on the act's effective date and that employs technology that became available for commercial use after the act's effective date.

- Provides that the PUCO has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company, except as provided in the act.
- Permits the PUCO to adopt various rules that it finds necessary to carry out the provisions of the act, including rules that address the removal from tariffs of services that were required to be filed in tariffs prior to the act's effective date.
- Provides that the PUCO must adopt any rules required under the act no later than 120 days after the act's effective date.
- Vests the PUCO with the authority to perform federal obligations and carry out the acts of a state commission, including rights and obligations under the federal Telecommunications Act of 1996, arbitrating disputes and approving agreements under the federal act, administering truth-in-billing, and other federal obligations and acts of a state commission.

Certification or registration in order to operate in Ohio

- 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.
- Requires a certificate application and registration to include (1) the telephone company's or wireless service provider's name and address, (2) a contact person's name and contact information, (3) a service description, (4) evidence of registration with the Secretary of State, (5) evidence of notice of intent to provide telecommunication service to the Public Utilities Tax Division of the Department of Taxation, and (6) with respect to certification only, evidence of financial, technical, and managerial ability to provide adequate service.
- Exempts incumbent local exchange carriers (ILECs) from the certification requirements with respect to their geographic service areas as those areas existed before the act's effective date.
- Permits the PUCO to suspend or reject a telephone company's certification application if it determines the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service.
- Requires, if any of the application information changes, a telephone company to update its certification and to provide any necessary notice to customers and requires a wireless service provider to update its registration.

- Requires the PUCO to adopt rules governing certification and registration update requirements.

Unfair or deceptive acts or practices

- Prohibits telephone companies, but not wireless service providers, from committing certain unfair or deceptive acts or practices regarding the offer or provision of telecommunications service in Ohio.
- States that a consumer purchase of wireless service is subject to the Consumer Sales Practices Act (CSPA) notwithstanding any provision of the CSPA to the contrary.
- Makes failure to include the following in a telephone company solicitation, offer, contract, or other communication as provided in the act an unfair or deceptive act or practice: (1) truthful, clear, conspicuous, and accurate disclosure of any material terms and conditions of service and any material exclusions or limitations and (2) disclosure of the company's name and contact information.
- Permits the PUCO to prescribe a review process to determine when disclosure of the above information is not practicable and therefore nondisclosure would not be an unfair or deceptive act or practice.
- Requires a telephone company to inform its customers of their rights and responsibilities regarding inside wire, repair and maintenance of customer-owned equipment, and use of a network interface device, and diagnostic visit charges, consistent with rules the PUCO adopts.
- Permits the PUCO to determine by rule or adjudication under the terms of the act what constitutes an unfair or deceptive act or practice in connection with the offer or provision of telecommunications service in Ohio.
- Requires the PUCO to notify telephone companies specifying the acts, practices, or omissions that the PUCO determines by rule or adjudication to be unfair or deceptive and states that such companies are not liable absent notice and adequate implementation time.

Service withdrawal/abandonment

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

- Specifies that the act's withdrawal and abandonment provisions do not apply to interconnection and resale agreements approved under the Telecommunications Act of 1996, pole attachments, and conduit occupancy.
- Prohibits, without PUCO approval, a telephone company from (1) withdrawing any tariff filed with the PUCO for pole attachments or conduit occupancy under the continuing pole attachment and conduit occupancy law or (2) abandoning service provided under that law.

Basic local exchange service

- Requires telephone companies providing basic local exchange service to ensure available, adequate, and reliable service.
- Requires the PUCO to adopt rules prescribing the following standards for the provision of basic local exchange service: (1) installation of service within five days of receipt of an application, (2) outages fixed within 72 hours (and reasonable efforts made to repair outages within 24 hours) and automatic customer credits for all affected customers, of which the telephone company is aware, in the amount of one month's charges per customer for basic local exchange service if an outage is reported and not fixed in 72 hours, with no requirement to credit a customer who caused an outage, (3) disconnection for nonpayment not earlier than 14 days after a bill due date, (4) the establishment of a billing due date not earlier than 14 consecutive days after the date the bill is postmarked for basic local exchange service provided to end users, (5) permitting a utility to require a deposit not to exceed 230% of a reasonable estimate of one month's service charges for the installation of service, and (6) reconnection of customers with past-due charges one business day after receipt of the first payment under a payment plan or the full amount due.
- Requires the PUCO to provide for a waiver of the standards prescribed in rule for basic local exchange service when the PUCO determines it appropriate.
- Requires an ILEC to provide basic local exchange service to all persons or entities in its service area requesting that service, and to provide that service on a reasonable and nondiscriminatory basis, except for the provision of basic local exchange service or any service to occupants of multitenant real estate in certain circumstances where a real estate owner takes action to benefit another service provider.
- Permits an ILEC to apply to the PUCO for a waiver of the requirement to provide basic local exchange service to all persons or entities in its service area requesting service and requires the PUCO to grant the waiver within 120 days if it finds it to be just, reasonable, not contrary to the public interest, and that the applicant demonstrates a financial hardship or unusual technical limitation, but after the

carrier has notified affected persons or entities in its service area and after the persons or entities have been afforded a reasonable opportunity to comment, including a public hearing.

- Permits an ILEC to alter rates for basic local exchange service (but restricts the total amount of yearly upward alterations to the amount authorized for an annual increase under PUCO rules, rescinded by the act, governing alternative regulation of telephone companies) based on 12-month intervals relating to when the last rate increase occurred and, in certain cases, depending on whether the ILEC's local exchange area qualified for alternative regulation under the PUCO rules.
- Prohibits banking of upward rate alterations.
- Permits ILECs owned and operated exclusively by and for their customers to alter basic local exchange service rates at any time by any amount.

Lifeline service

- Requires an ILEC eligible for universal-service support to implement lifeline service for eligible customers, defined as either being at or below 150% of the federal poverty level or participating in any low-income assistance program that is specified in PUCO rules, and permits an ILEC to offer lifeline customers bundles and packages at prevailing rates less the lifeline discount.
- Requires the PUCO to work with appropriate state agencies administering federal or state low-income assistance programs, and with carriers, to obtain information necessary for eligibility and automatic enrollment, requires the PUCO to establish requirements for the implementation of automatic enrollment, and requires ILECs to implement automatic enrollment in accordance with those requirements.
- Provides for situations in which an individual is determined ineligible or no longer eligible and provides opportunities to prove eligibility.
- Provides that lifeline service must consist of: (1) flat-rate, monthly, primary access line service with touchtone service at a monthly discount, (2) a waiver of all nonrecurring service order charges for establishing service, but not more than once per customer at a single address in a 12-month period, and (3) free blocking of toll, 900, and 976 service.
- Requires that ILECs offer special payment arrangements to lifeline customers with past-due bills with an initial payment not to exceed \$25 before the installation of service and the balance for regulated service charges to be paid over six monthly installments.

- Provides that lifeline customers with past due toll service bills are to have toll-restricted service until the past due charges have been paid or until service is established with another toll service provider.
- Requires every ILEC with 50,000 or more access lines that is required to provide lifeline service to establish an annual marketing budget for promoting, marketing, and performing outreach regarding lifeline service.
- Requires all funds in the lifeline marketing budget to be spent for promotion, marketing, and outreach of lifeline services, and prohibits their use for any administrative costs for lifeline implementation.
- Creates a Lifeline Advisory Board composed of staff of the PUCO, the OCC, consumer groups representing low-income constituents, two representatives from the Ohio Association of Community Action Agencies, and every ILEC with 50,000 or more access lines that is required to implement lifeline service to coordinate all activities relating to the promotion and marketing of and outreach regarding lifeline service, and permits the PUCO to review and approve, in accordance with PUCO rules, the decisions of the advisory board, including decisions on how lifeline promotion, marketing, and outreach services are implemented.
- Prohibits ILECs required to implement lifeline service from recovering lifeline marketing, promotion, and outreach expenses from end users.
- Permits ILECs required to implement lifeline service to recover from end users of the carriers' telecommunications service other than lifeline service customers, by a method approved by the PUCO, lifeline service discounts and any other lifeline service expenses (except for marketing, promotion, and outreach expenses) that the PUCO prescribes by rule and that are not recovered through federal or state funding, and requires a carrier seeking recovery of these discounts or expenses to apply to the PUCO, in accordance with PUCO rules, for approval of its method of recovery.
- Requires the PUCO, if an ILEC's method of recovery of lifeline discounts or expenses includes a customer billing surcharge, to prescribe how the surcharge is to be identified on customer bills.
- Requires every ILEC required to implement lifeline service to file an annual report with the PUCO identifying how many customers receive the service.

Rates, terms, and conditions for certain services

- Requires that the rates, terms, and conditions for 9-1-1 service provided by a telephone company or a telecommunications carrier, and for carrier access, N-1-1 services (other than 9-1-1 services), pole attachments and conduit occupancy, pay telephone access lines, toll presubscription, and telecommunications relay service, all provided by a telephone company, be approved and tarified in the manner prescribed by PUCO rule, and be subject to the applicable laws, including PUCO and FCC rules, regulations, and orders.
- Permits the PUCO to order changes in a telephone company's rates for carrier access, but specifies that if the PUCO reduces a telephone company's rates for carrier access that are in effect on the act's effective date, the reduction must be on a revenue-neutral basis under terms and conditions established by the PUCO.
- 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.
- Prohibits the PUCO from establishing pricing for unbundled elements, resale, or interconnection that is not in compliance with federal law.
- Requires a telephone company, except with regard to rate alterations made under the act's provisions where 30-days notice is required, and except, if applicable, with regard to the Community-voicemail Service Pilot Program, 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."
- Requires telephone companies to inform customers of the PUCO's toll-free number and e-mail address on all bills and disconnection notices, and residential customers of the OCC's toll-free number and e-mail address on all residential bills and disconnection notices.
- Authorizes the PUCO to adopt rules requiring telephone companies that provide telephone toll service to offer discounts for operator-assisted and direct-dial services for persons with communication disabilities.
- Authorizes the PUCO to adopt rules regarding the rates, terms, and conditions of intrastate telecommunications service initiated from an inmate telephone instrument.

Investigations and adjudications

- Permits the PUCO to investigate or examine the books, records, or practices of any telephone company.
- Permits any person to file with the PUCO, or the PUCO to initiate, a complaint alleging that any rate, practice, or service of a telephone company other than a wireless service provider is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any of the act'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 act's provisions, to be brought by a complaint filed under the act's complaint procedure.

Various telecommunication and other changes

- Requires every telephone company providing telephone exchange service to maintain access to 9-1-1 service on a residential customer's line for at least 14 days immediately following any disconnection for nonpayment of telephone exchange service.
- Requires the PUCO to implement, in at least one urban area and one rural area, a two-year Community-voicemail Service Pilot Program, for those who have no traditional access to telephone service, through a competitive-bidding process for selection of vendors to implement the program, requires the imposition of an assessment on all local exchange carriers for the cost of providing the service, and authorizes forfeitures for carriers who do not comply with the assessment requirements.
- Requires, to the extent they are subject to the PUCO's jurisdiction under the act's provisions, every telephone company, including every wireless service provider, every telecommunications carrier, and every provider of internet protocol-enabled services, including voice over internet protocol, to comply with every order, direction, and requirement of the PUCO made under authority of the act's provisions.
- Limits the information required in a telephone company's and wireless service provider's annual report to information necessary for the PUCO to calculate the PUCO assessment.

- Eliminates authority for the PUCO to require a telephone company to file supplemental reports of each exchange area it owns or operates and eliminates the requirement that the PUCO require such supplemental report if 15% of the subscribers of an exchange request it.
- Requires the PUCO to adopt rules that require a telephone company subject to continuing law governing pole attachments and conduit occupancy to include in its annual report information required by the PUCO to calculate pole attachment and conduit occupancy rates and any other information the PUCO determines necessary and requires by rule for the PUCO to fulfill its responsibility under the pole attachment law.
- 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.
- Alters the applicability of telephone law regarding electricity service and automatic package carriers.
- Eliminates law that stated 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.
- Eliminates law that required 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, basic-local-exchange-service rate changes authorized under the act, lifeline service, discounts for operator-assisted and direct-dial services for persons with communication disabilities, carrier access and other services, inmate telephone instruments, and 9-1-1 service.
- Establishes requirements regarding the approval of domestic telephone company mergers by the PUCO and provides for the enforcement of PUCO rule violations by the Attorney General and Ohio courts.
- Creates the Select Committee on Telecommunications Regulatory Reform to review the economic benefits of the act and its impact on jobs, telephone company rates, telephone company quality of service, lifeline program customers, rural markets, rural broadband deployment, the Community-voicemail Service Pilot Program, and

carrier access to private property, and requires the Committee to submit a written report of its findings and recommendations to the General Assembly and the Governor no later than four years after the effective date of the act, at which time the Committee will cease to exist.

- Requires the PUCO to cooperate with the Committee and provide reports and any other information the Committee requests, and permits the Committee to request assistance from the Legislative Service Commission.
- Requires an offender-monitoring device to be designed for electronic monitoring and not be a converted wireless phone or tracking device not designed for this purpose and requires the device to provide a means of text-based or voice communication.
- Repeals law that required 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 law that permitted the PUCO to make investigations as it deemed necessary and ascertain and prescribe reasonable standards of telephone service.
- Repeals law that authorized 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 law that allowed for changes in service focused on the provision of adequate service.
- Repeals law that permitted the PUCO to order repairs and improvements in telephone service.
- Repeals law that permitted 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 law that required party lines to be yielded in an emergency.
- Repeals law that prohibited threat or harassment over the telephone.

- Repeals law that permitted PUCO dismissal of a petition for approval of an inter-utility transaction or merger.
- Removes references to and provisions of law that related to telegraph companies and their regulation by the PUCO.
- Removes defined terms from continuing 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

Continuing law concerning the regulation of telecommunications service is a combination of federal and state statutes, rules and regulations, and case law. Ohio's telecommunications statutes, with the enactment of the act, continue to 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 providing for alternative regulation of telephone companies, previously codified in Revised Code Chapter 4927.

This alternative regulation law, greatly restructured by the act, permitted the telecommunications service of a public-utility telephone company¹ to be exempted from all or certain requested portions of the law that prescribed 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 had to be met. Through a substantial revision of Chapter 4927. and provisions of continuing law, the act revises the statutory framework for the PUCO's regulation of telecommunications service.

¹ Under continuing law, 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 act). For purposes of the new regulatory scheme in the act, a "telephone company" has the same meaning. The act, however, redefines "public utility" so that it does not include any provider, including a telephone company, with respect to the provision of advanced service, broadband service, information service, internet protocol-enabled service, and telecommunications service not commercially available on the act's effective date that uses new technology not available until after that date (which services are described later in this analysis).

Please note that all definitions, amended or enacted in R.C. 4927.01 of the act are to be applied consistent with the federal Telecommunications Act of 1996 and all federal decisions interpreting those definitions. (R.C. 4927.01.)

State policy

(R.C. 4927.02)

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

The act 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 to unduly disadvantage providers of competing and functionally equivalent services.

The act revises the other former policy objectives as follows:

- (1) One objective was to "rely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market, to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service." The act alters the policy to state that the objective is to "rely primarily on market forces, where they exist, to maintain reasonable service levels for telecommunications services at reasonable rates."²

² Former law used the term "public telecommunications service," while the act uses the term "telecommunications service." "Public telecommunications service" was 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 act 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 by the act 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.)

(2) Where the objective under prior law was to encourage innovation in the telecommunications industry, the act adds "and the deployment of advanced telecommunications services."

(3) The act 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, and (b) recognize the continuing emergence of a competitive telecommunications environment through flexible regulatory treatment of public telecommunications services where appropriate.

(4) One of the former policy objectives was 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 act, the objective is changed 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 former policy objectives was to protect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs. The act specifies that the lifeline assistance programs are federal.

The act also adds two policy objectives:

(1) To provide incentives for competing providers of telecommunications service 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 prior law

Under prior law governing alternative regulation of telephone utilities (R.C. 4927.01 to 4927.05), the PUCO was able, upon its own initiative or upon application of a telephone company, to exempt a telephone company as to any public telecommunications service, including basic local exchange service, from any provision governing the powers of the PUCO,³ any provision governing the fixation of public-utility rates,⁴ certain provisions governing telegraph and telephone companies,⁵ or any

³ R.C. Chapter 4905.

⁴ R.C. Chapter 4909.

rule or order adopted or issued under those provisions. But there were a number of statutes from which the PUCO was not permitted to exempt a telephone company with regard to basic local exchange service.⁶ The PUCO was also permitted to establish alternative regulatory requirements to apply to the exempted public telecommunications service and company. To take any of these actions, the PUCO was required to find that the action was in the public interest and that either (1) the telephone company was subject to competition with respect to the service or (2) the customers of the service had reasonably available alternatives. The law set forth a number of factors for the PUCO to consider in determining whether these conditions were met. To authorize an exemption or establish alternative regulatory requirements for basic local exchange service, the PUCO was also required to find that there were no barriers to entry to the market.

Prior law also specified that the PUCO had jurisdiction over every telephone company that received an exemption or to which alternative regulatory requirements applied. Consequently, this law authorized the PUCO to, after notice and hearing, change any order that granted an exemption or established alternative requirements if the PUCO determined that the findings upon which the order was based were no longer valid and that the change was in the public interest. But the PUCO could not make such a change more than five years after the order was entered into, unless the affected telephone company consented. Prior law also permitted the PUCO to adopt rules to carry out the alternative-regulation laws described above.

Prior law also permitted the PUCO to establish rates and charges for any public telecommunications service for which it had not provided an exemption or alternative regulatory requirements by a method other than the standard ratemaking method. It could do this on its own initiative or upon application by a telephone company. To use an alternative method, the PUCO had to find that the use of the method was in the public interest. Alternative methods could include methods that (1) maintained universal telephone service in Ohio, (2) minimized the costs and time expended in the regulatory process, (3) tended to assess the costs of any telecommunications service to the entity or service that caused such costs to be incurred, (4) afforded rate stability, (5) promoted and rewarded efficiency, quality of service, or cost containment by telephone companies, or (6) provided sufficient flexibility and incentives to the telecommunications industry to achieve high quality, technologically advanced, and

⁵ R.C. 4931.01 to 4931.35.

⁶ The following are the statutes to which the telephone companies were subject: 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.

universally available telecommunications services at just and reasonable rates and charges.

This law specified that an application that proposed 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 had not provided an exemption or alternative regulatory requirements was to be deemed an application for an increase in rates and charges and therefore subject to the standard ratemaking-application procedure in continuing law. The prior law also set forth the following items required for inclusion in an application for the establishment of rates under the standard ratemaking statute where the application was not for an increase in rates and charges, but proposed an alternative method of establishing rates and charges (and the PUCO had not provided an exemption or alternative regulatory requirements):

- (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.

Prior law also provided that any person could request a hearing on the application. The PUCO could also, upon the application of any telephone company that was an incumbent local exchange carrier (ILEC)⁷ with fewer than 50,000 access lines, to exempt the company from certain statutes⁸ or establish alternative regulatory

⁷ The act uses 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 federal Telecommunications Act of 1996), provided telephone exchange service in an 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 act 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.)

⁸ The PUCO was 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

requirements. The PUCO had to find that the alternative requirements were in the public interest. The PUCO, in carrying out these provisions, was permitted to use different methods of establishing rates and charges of different companies, if the methods were reasonable and did not confer any undue economic, competitive, or market advantage or preference upon any company.

PUCO jurisdiction over telecommunications

Replacing alternative regulation

The act repeals the alternative-regulation sections described above. In its place, the act establishes a regulatory regime that gives the PUCO power to regulate telecommunications by expressly limiting the PUCO's authority and then providing exceptions to those limitations, as well as establishing various other duties, requirements, limitations, and conditions regarding telecommunications as described below.⁹ Additionally, the act requires that the PUCO initially adopt rules to implement those new provisions not later than 120 days after the act'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.¹⁰ The act 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 regulations for ILECs), Chapter 4901:1-5 (furnishing of intrastate telecommunications service by local exchange companies), 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 services assessment procedures), and related definitions. Under the act, rescission of these rules takes effect as provided by law and, notwithstanding any other provision of the Revised Code, is not subject to legislative

(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).

⁹ In various sections of Chapters 4901., 4903., and 4905. of the Revised Code included in the act, the PUCO also is authorized to carry out the purposes of certain chapters of Title 49 of the Revised Code. The act adds new Chapter 4927. to the list of Title 49 chapters in each of those sections. Those sections are R.C. 4901.02, 4901.15, 4901.22, 4903.20, 4903.22, 4903.23, 4905.09, 4905.51, 4905.52, 4905.61, and 4905.63.

¹⁰ The act specifies that the other rules that the PUCO may adopt include rules regarding the removal from tariffs of services that were required to be filed in tariffs prior to the act's effective date (R.C. 4927.03(E)).

review or invalidation.¹¹ And, the act prohibits the PUCO from taking enforcement action, on or after the act's effective date, against any telephone company regarding any provision of any of the above rules, except for Rule Nos. 4901:1-5-09, 4901:1-6-18, and 4901:1-6-24 and related definitions and the rule governing basic local exchange service pricing as that rule existed on the act's effective date.

PUCO jurisdiction

(R.C. 4927.03)

Service jurisdiction

The act states that the PUCO has no authority over the quality of service and the service rates, terms, and conditions of telecommunications service provided to end users by a telephone company, except as specifically authorized in the new Chapter 4927.

Jurisdiction over internet protocol-enabled services and not yet commercially available services

The act specifies that, except as provided under the act's provisions granting the PUCO the authority to perform certain federal obligations, including carrying out rights and obligations under the federal Telecommunications Act of 1996 and authority to mediate and arbitrate disputes and approve agreements under the federal act, and except to the extent that the PUCO is required to exercise authority under federal law, the PUCO has no authority over any interconnected voice over internet protocol-enabled service¹² or any telecommunications service that is not commercially available on the act's effective date and that employs technology that became available for commercial use after that date. But if the PUCO finds that the exercise of its authority is necessary for the protection, welfare, and safety of the public, then it may adopt rules specifying the necessary regulation. The act specifies that the Office of the Consumers' Counsel (OCC) has authority to assist and represent residential customers to the extent that the PUCO adopts any such regulation. The act also specifies that a consumer purchase of a service that is not commercially available, as described above, constitutes a consumer transaction for purposes of the Consumer Sales Practices Act (CSPA) (R.C. 1345.01 to 1345.13), notwithstanding any provision of the CSPA to the contrary, unless the PUCO exercises jurisdiction over the service by rules adopted as described above.

¹¹ Section 3 of the act.

¹² See definitions of "voice over internet protocol service" and "internet protocol-enabled services" discussed under the heading "**Internet protocol-enabled services**," in the text later in this final analysis.

Wireless jurisdiction

Regarding wireless service, resellers of wireless service, or wireless service providers,¹³ the act states that the PUCO has no authority, except with respect to (1) the PUCO's authority to address carrier access policy and to create and administer mechanisms for carrier access reform, including high cost support (R.C. 4927.15(C)), (2) 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), (3) 9-1-1 service (R.C. 4931.40 to 4931.70), and (4) criminal penalties regarding violations of 9-1-1 service law and telephone relay service law (R.C. 4931.99).

The act also states that the PUCO has authority over wireless service and wireless service providers as follows, but only to the extent authorized by federal law, including federal regulations: (1) to the extent that the PUCO carries out certain acts of a state commission as authorized in federal law, specifically rights and obligations under the Telecommunications Act of 1996, mediating and arbitrating disputes and approving agreements under the federal act, administering telephone numbers and number portability, certifying telecommunications carriers eligible for universal-service funding under federal law, and administering customer proprietary network information under applicable federal law (R.C. 4927.04(A) to (D) and (F)), (2) as provided in a section of the act requiring wireless service provider registration with the PUCO before operating in Ohio (R.C. 4927.05), (3) as provided in a section of the act governing adjudication of disputes between telephone companies and wireless service providers and between wireless service providers (R.C. 4927.21), and (4) as provided in a section of the act requiring compliance with PUCO orders, directions, and requirements (R.C. 4927.20).

The act 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 those assessments (R.C. 4905.10 and 4905.14) (see "**Annual reports**," below). Wireless service providers are also subject to assessments to fund OCC operations (R.C. 4911.18).

¹³ The act 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.)

The act gives the PUCO the necessary authority to enforce the act's provisions described above regarding wireless jurisdiction.

Telephone company jurisdiction

The act states that, for purposes of the new Chapter 4927., 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 the new 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 to regulate utilities), 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, 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 measurement 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), 4905.35 (prohibiting utilities from discriminating), 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), 4905.48 (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 (mandamus actions and injunctive relief).

The act also expressly makes certain sections inapplicable to telephone companies. Those sections are R.C. 4905.40, 4905.41, 4905.42, 4905.45, and 4905.46 (issuance of stocks, bonds, and notes), and 4905.47 (capitalization).

"Public utility" definition changes impacting PUCO jurisdiction

Advanced services

(R.C. 4905.02; 4905.042 (not in the act))

The act amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of advanced services, including a telephone company. The act references

the meaning of "advanced services" 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 public utility definition applies to new Chapter 4927. and other chapters of Title 49, including Chapters 4901., 4903., and 4909. It also applies to other sections of the Revised Code.¹⁴ Thus, the act'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.

Continuing 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 act 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)

The act amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of broadband service, including a telephone company. The act refers to "broadband service" as having whatever definition or classification the Federal Communications Commission (FCC) determines. As explained in "**Advanced services**," above, the definition of "public utility" applies to new Chapter 4927. and other chapters of Title 49, including Chapters 4901., 4903., and 4909. It also applies to other sections of the Revised Code. Thus, the act'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 service

(R.C. 4905.02)

The act amends the definition of "public utility" to exclude any provider of information service, including a telephone company. The act references the meaning of "information service" 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,

¹⁴ 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 urban redevelopment corporations); R.C. 3752.02 (exceptions regarding the cessation of regulated operations); R.C. 4719.01 (telephone solicitation); and possibly other sections.

control, or operation of a telecommunications system or the management of a telecommunications service." As explained in "**Advanced services**," above, the definition of "public utility" applies to new Chapter 4927. and other chapters of Title 49, including Chapters 4901., 4903., and 4909. It also applies to other sections of the Revised Code. Thus, the act's exclusion of any provider of information service as a "public utility" affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Not yet commercially available services

(R.C. 4905.02 and 4927.03)

The act amends the definition of "public utility" to exclude, unless the PUCO exercises authority for the public's protection, safety, and welfare, any provider, including a telephone company, of a telecommunications service that is not commercially available on the act's effective date and that employs technology that became available for commercial use after that date. As explained in "**Advanced services**," above, this definition applies to new Chapter 4927. and other chapters of Title 49, including Chapters 4901., 4903., and 4909. It also applies to other sections of the Revised Code. Thus, the act'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 4927.01)

Under the act, "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 communications in internet protocol format or a successor format, regardless of how any particular such service is classified by the FCC, and includes voice over internet protocol service. "Voice over internet protocol service" is defined under the act 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 act amends the definition of "public utility" to exclude, unless the PUCO exercises authority for the public's protection, safety, and welfare, any provider of internet protocol-enabled services (including voice over internet protocol service), including a telephone company. As explained in "**Advanced services**," above, this

definition applies to new Chapter 4927. and other chapters of Title 49, including Chapters 4901., 4903., and 4909. It also applies to other sections of the Revised Code. Thus, the act's exclusion of any provider of such 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 act repeals provisions of law that expressly vested 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 act 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 act specifies that these obligations include performing the acts of a state commission as defined in the federal Communications Act of 1934, as amended, and include, but are not limited to, carrying out any of the following:

- (1) Rights and obligations under the Telecommunications Act of 1996;
- (2) Authority to mediate and arbitrate disputes and approve agreements under the Telecommunications Act of 1996;
- (3) Administration of telephone numbers and number portability;
- (4) Certification of telecommunications carriers¹⁵ eligible for universal-service funding under federal law;
- (5) Administration of truth-in-billing;
- (6) Administration of customer proprietary network information under applicable federal law;

¹⁵ The act defines "telecommunications carrier" as used in the new Chapter 4927. as having the same meaning as in the Telecommunications Act of 1996 (47 U.S.C. 153). "Telecommunications carrier" under federal law means any provider of telecommunications services, except "aggregators of telecommunications services" (defined as any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services (47 U.S.C. 226(a)(2))). The federal definition of telecommunications carrier specifies that such a carrier shall be treated as a common carrier under the Telecommunications Act of 1996 only to the extent that it is engaged in providing telecommunications services, except that the FCC shall determine whether the provision of fixed and mobile satellite service is to be treated as common carriage.

(7) Outage reporting consistent with federal requirements.

The act states that except as provided in a provision of the act governing wireless jurisdiction, the PUCO has power and jurisdiction under these provisions over a telecommunications carrier to the extent necessary to perform the seven listed obligations. The act also specifies that nothing in the new Chapter 4927. limits the PUCO's authority under the Telecommunications Act of 1996, including the PUCO's authority over the provision of universal-service funding.

Certification or registration in order to operate in Ohio

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

PUCO rules rescinded by the act required all telephone companies, except commercial mobile radio service providers, to be PUCO-certified. Minimum requirements for certification included (1) a certificate of good standing and certificate to operate as an out-of-state entity issued by the Ohio Secretary of State, (2) full address and telephone number, and if available, e-mail address and web site, (3) verification of compliance with any applicable affiliate transaction 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 corporate structure, managerial expertise, and ownership, (6) information pertaining to similar operations in other states, (7) evidence of notice to the Ohio Department of Taxation, Public Utilities Tax Division, of the intent to provide service, (8) any waivers from PUCO retail telecommunications service rules, and (9) specific documentation attesting to the applicant's financial viability. There were additional requirements for competitive local exchange carriers, including proposed end user tariffs, ILEC exchanges intended to be served, and an affidavit verification that the applicant has entered into interconnection negotiations and/or transport and termination agreements with the ILEC serving the geographic area in which the applicant would have provided service.

For a provider of basic local exchange service, the certification determination was required to include a review of the applicant's financial, managerial, and technical ability to provide the proposed service. A hearing on a certification application could be ordered. The law provided for a general, 30-day automatic approval date for telephone company certifications. The PUCO was permitted to revoke any certification upon a demonstration that the company had engaged in a pattern of conduct in violation of Ohio law, including rules.

The act 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 act exempts ILECs, with respect to their geographic service areas as those areas existed on the act's effective date, 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 act 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 act, 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. Telephone companies are to provide any necessary notice to customers of updates.

Unfair or deceptive acts or practices

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

Under law unchanged by the act, the Consumer Sales Practices Act (CSPA) is not applicable to telephone companies and other companies to which Ohio public utility law applies. That CSPA governs unfair, deceptive, and unconscionable acts or practices involving consumer transactions. A PUCO rule rescinded by the act (O.A.C. 4901:1-5-04)¹⁶ delineated unfair and deceptive acts and practices for "telecommunications

¹⁶ The rule was adopted pursuant to authority repealed by the act that conferred power on the PUCO to establish minimum standards of telephone service (R.C. 4905.231).

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 rescinded rule were largely similar to those of the act, except that the rule required a telecommunications provider to address a customer's billing or service inquiry at the time that the customer called, to discontinue any sales discussion upon a customer's request, and not to engage in sales practices when a customer called to report service problems or to make payment arrangements, until the telecommunications provider first confirmed that it had completely responded to the customer's concerns.

The act prohibits telephone companies (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 act 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 act specifies that the PUCO may prescribe a review process to determine when this requirement is not practicable and therefore nondisclosure would not be an unfair or deceptive act or practice.

(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 act specifies that the PUCO may prescribe a review process to determine when this requirement is not practicable and therefore nondisclosure would not be an unfair or deceptive act or practice.

(3) The company must inform its customers, as applicable and in any reasonable manner, 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, consistent with PUCO rules.

The act 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 act also specifies that no telephone company is to be liable for any such act, practice, or omission absent the required notice and adequate time for implementation.

While the act 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 CSPA, notwithstanding any provision of the CSPA to the contrary.

Service withdrawal/abandonment

(R.C. 4927.07)

The act permits a telephone company (except for an ILEC 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 act also permits a telephone company (except for an ILEC 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. The act also specifies that these abandonment provisions, in addition to not applying to ILECs providing basic local exchange service, do not apply to interconnection and resale agreements approved under the Telecommunications Act of 1996, pole attachments, or conduit occupancy.

The act provides that a telephone company may not, without first filing a request with the PUCO and obtaining its approval, (1) withdraw any tariff filed with the PUCO for pole attachments or conduit occupancy under Ohio's continuing pole attachment and conduit occupancy law or (2) abandon service provided under that law.

Basic local exchange service

(R.C. 4927.01, 4927.08, 4927.11, and 4927.12)

The act 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.¹⁷ The PUCO is to adopt rules prescribing

¹⁷ Under prior law, "basic local exchange service" was defined as "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 were, and generally remain under the act, (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 act alters the definition by providing that the term 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

certain standards for the provision of basic local exchange service. The rules are to provide for a waiver of the standards, in circumstances determined appropriate by the PUCO. The act specifies that no other rules regarding basic local exchange service may be adopted except as expressly authorized by the act's provisions. Under the act, the standards are to be the following:

(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 to the telephone company, and the telephone company is to make reasonable efforts to repair a basic local exchange service outage within 24 hours, excluding Sundays and legal holidays, after the outage is reported to the telephone company.

(3) If a basic local exchange service outage is reported to the telephone company and lasts more than 72 hours, the company is to credit every affected customer, of which the telephone company is aware, one month's charges for basic local exchange service. But if a customer caused the outage, the telephone company may elect not to credit that customer.

(4) Due dates may not be earlier than 14 consecutive days after the date that a bill is postmarked for a bill for basic local exchange service provided to end users.

(5) 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.

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 existed on the effective date of the [act]; and consists" of certain enumerated services. The services include (1) to (8) described above, with a few changes and additions. With respect to additional services, "basic local exchange service" under the act also includes flat-rate telephone exchange service for residential end users. In addition, the act 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 act 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, by paying the rate for basic local exchange service, may complete calls to other telephone customers without being assessed long distance toll charges." (R.C. 4927.01.)

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

(6) A telephone company may require a deposit, not to exceed 230% of a reasonable estimate of one month's service charges, for the installation of basic local exchange service for any person that it determines, in its discretion, is not creditworthy.

(7) If a customer's basic local exchange service is disconnected for nonpayment, the telephone company is to reconnect that customer, unless prevented from doing so by circumstances beyond the company's control or unless the customer requests otherwise, not later than one business day after the telephone company receives the full amount due or the first payment under a mutually agreed-upon payment arrangement (whichever occurs earlier).

The act requires an ILEC to provide basic local exchange service to all persons or entities in its service area requesting that service, and to provide that service on a reasonable and nondiscriminatory basis. But the act permits an ILEC to apply for a waiver from compliance with this requirement. An application for the waiver is to include at least the reason for the requested waiver, the number of persons or entities who would be impacted by the waiver, and the alternatives that would be available to those persons or entities if the waiver were granted. The act requires the applicant ILEC to publish notice of the waiver application once in a newspaper of general circulation throughout the service area identified in the application. The applicant ILEC is to provide additional notice to affected persons or entities as required by the PUCO. The act requires the PUCO to define "affected" by rule.

The PUCO is to grant the waiver no later than 120 days after the application's filing if, upon investigation, it finds the waiver to be just, reasonable, and not contrary to the public interest, and that the applicant demonstrates a financial hardship or an unusual technical limitation, but after the affected persons or entities have been afforded a reasonable opportunity to comment. The opportunity to comment is to include a public hearing conducted in accordance with PUCO rules and in the service area identified in the application. If the PUCO denies the waiver, the denial order must specify the reason for denial. The act requires the PUCO to adopt rules to implement the waiver provisions.

The act also sets forth a limited exception to the requirement to provide basic local exchange service. An ILEC 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 or agrees to accept incentives or rewards offered by a telecommunications service 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 service. If any of these apply to exempt the ILEC from providing service, the ILEC is to notify the PUCO of that fact within 120 days of receiving knowledge of the reason for the exemption.

An ILEC 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 act'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 a service refusal as described above exists. If the PUCO finds no reason for refusal, 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 refusal is found to exist, the complaint must be dismissed.

The act 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 service refusal no longer exists.

The act permits an ILEC to alter its rates for basic local exchange service upward or downward, upon not less than 30-days notice to the PUCO and affected customers. The act limits the total amount of upward alterations in a 12-month period to the amount authorized for an annual increase under PUCO rules rescinded by the act, governing alternative regulation of telephone companies.¹⁸ If the ILEC's exchange area¹⁹ to which the alteration would apply previously qualified for alternative regulation of basic local exchange service under the rescinded PUCO rules governing alternative regulation of telephone companies,²⁰ the ILEC is permitted to upwardly alter rates for basic local exchange service in that exchange area immediately upon the act's effective date as long as the ILEC made no increase of those rates in the 12-month period prior to that date for that exchange area. In this case, the act's effective date would be the beginning date of the 12-month period in which upward alterations may not exceed the limit amount discussed above. If, however, an ILEC increased its rates for basic local exchange service within 12 months prior to the act's effective date for that exchange area, the ILEC may not institute an upward alteration under the act for that exchange

¹⁸ This amount is \$1.25 (O.A.C. 4901:1-4-11(A)).

¹⁹ The act defines "exchange area" as a geographical service area established by an ILEC and approved by the PUCO.

²⁰ O.A.C. Chapter 4901:1-4 (rescinded by the act).

area until 12 months have passed since the date of that last increase. In this case, the date that upward alteration would be the beginning date of the 12-month period in which upward alterations may not exceed the limit amount discussed above. Any subsequent 12-month period for an exchange area in either situation is to commence immediately after the previous 12-month period.

If the ILEC's exchange area did not previously qualify for alternative regulation, the act prohibits the ILEC from upwardly altering its rates for basic local exchange service for that exchange area unless the ILEC demonstrates in an application to the PUCO that two or more alternative providers (including telecommunications carriers, telephone companies, including wireless service providers, and providers of internet protocol-enabled services, including voice over internet protocol) offer competing service to the basic local exchange service offered by the ILEC in the exchange area. The act provides that the application is to be deemed to meet this requirement unless the PUCO, within 30 days after the application is filed, issues an order finding that the requirement has not been met. In this case, the 31st day after the ILEC files the application would be the beginning date of the 12-month period in which upward alterations may not exceed the limit amount discussed above. Again, subsequent 12-month periods are to commence immediately after the previous 12-month period. The act prohibits banking of permissible upward rate alterations in all situations.

The act specifies that at any time and upon not less than 30-days notice to the PUCO and to affected customers, an ILEC owned and operated exclusively by and solely for its customers may alter its rates for basic local exchange service by any amount. The act 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 in rules.

A PUCO rule, rescinded by the act,²¹ regarding basic local exchange service exempted lifeline customers from rate increases for basic local exchange service. Specifically, the rule provided for a discount adjustment to negate any rate increase: "If rates for a lifeline customer's [basic local exchange service] increase . . . , the lifeline discount shall be adjusted to ensure there is no net rate increase to qualifying lifeline customers."²² Though the act does not contain a similar "no net rate increase" provision, it prohibits ILECs from upwardly altering rates for basic local exchange service for customers receiving lifeline service, until January 1, 2012.

²¹ Section 3 of the act.

²² O.A.C. 4901:1-4-11(D).

Access to 9-1-1 service after disconnection

(R.C. 4927.09)

The act requires every telephone company providing telephone exchange service to maintain access to 9-1-1 service on a residential customer's line for at least 14 consecutive days after a disconnection for nonpayment of a customer's telephone exchange service.

Community-voicemail Service Pilot Program

(Section 6)

The act requires the PUCO to implement a two-year Community-voicemail Service Pilot Program in at least one urban area and one rural area in Ohio for individuals who are in a state of transition and have no access to traditional telephone exchange service or readily available alternatives. The act specifies that these individuals include the homeless, clients of battered-spouse programs, and displaced and returning veterans.

The PUCO is to establish a competitive bidding process for program implementation and select one or more vendors to provide the community-voicemail service. The selection is to occur no later than one year after the act's effective date. The total amount permitted for the program under all contracts is not to exceed \$500,000. Vendors are to begin providing services not later than 60 days after being selected, unless the PUCO grants an extension, which is to be granted for good cause. The PUCO is to determine the length of time for any extensions.

To fund the program, the act requires the PUCO to impose an assessment on each telephone company that is a local exchange carrier.²³ The assessments are to be allocated proportionately based on the number of retail, intrastate, customer-access lines, or the equivalent, of each carrier. The PUCO is to take any measures that it considers necessary to protect the confidentiality of information provided by carriers required to pay the assessment. The act creates the Community-voicemail Service Pilot Program Fund in the state treasury, into which assessments are to be deposited. The PUCO is to use that money solely to compensate the vendors selected to provide the service.

²³ The act defines a "local exchange carrier" as any person engaged in the provision of telephone exchange service, or the offering of access to telephone exchange service or facilities for the purpose of originating or terminating telephone toll service (R.C. 4927.01).

The act prohibits local exchange carriers from recovering the assessment directly from customers through a billing surcharge.

The act permits the PUCO to assess a forfeiture of up to \$1,000 on any local exchange carrier that fails to pay an assessment. Each day of continued violation is to be a separate offense. The act requires forfeitures to be recovered in accordance with continuing law governing collection of forfeitures.

The act permits the PUCO to adopt rules as it finds necessary to carry out the program. It also requires the PUCO to adopt rules specifying how recipients of services under the program are to be notified or educated of the program's termination.

The act requires the PUCO, at the program's conclusion, to evaluate its effectiveness, its costs and benefits, and the availability of other options that may better serve the needs of individuals in a state of transition. No later than 120 days after the program's conclusion, the PUCO is to report its findings, including any recommendations for continuation, expansion, or changes to the program, to the Select Committee on Telecommunications Regulatory Reform established by the act.

Lifeline service

(R.C. 4927.13)

The act requires an ILEC 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 act 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 per customer at a single address in a 12-month period;

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

The act permits a carrier to offer to lifeline service customers any other services and bundles or packages of services²⁴ at prevailing prices, less the lifeline discount. The act also requires that the rates, terms, and conditions for the ILEC's lifeline service are to

²⁴ The act defines "bundle or package of services" as one or more telecommunications services or other services offered together as one service option at a single price (R.C. 4927.01).

be tariffed in the manner prescribed by PUCO rule. In addition, the act requires the ILEC to offer special payment arrangements to lifeline 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 of the regulated local service charges to be paid over six, equal, monthly payments. Lifeline customers with past due bills for toll service charges must have toll restricted service until the past due charges have been paid or the customer establishes service with another toll service provider.

Lifeline marketing budget

The act requires every ILEC with 50,000 or more access lines that is required to provide lifeline service to establish an annual marketing budget for promoting and performing outreach regarding lifeline service. In addition, the act requires all funds in the lifeline marketing budget to be spent only for the purposes of promotion and marketing of, and outreach regarding, lifeline service and prohibits their use for any administrative costs for implementation of lifeline service. Under the act, ILECs are prohibited from recovering lifeline marketing, promotion, and outreach expenses from end users. All aspects of the ILECs' state-specific lifeline service must be consistent with federal requirements.

Lifeline Advisory Board

The act requires the promotion and marketing of, and the outreach regarding, lifeline services to be coordinated through a single advisory board. To perform this function, the act creates the Lifeline Advisory Board, composed of staff of the PUCO, the Office of the Consumers' Counsel (OCC), consumer groups representing low-income constituents, two representatives from the Ohio Association of Community Action Agencies, and every ILEC with 50,000 or more access lines that is required to implement lifeline service. Under the act, the PUCO may review and approve the decisions of the Advisory Board in accordance with PUCO rules including decisions on how lifeline marketing, promotion, and outreach services are implemented.

Lifeline eligibility

The act specifies that eligibility for lifeline service is to be based on either of the following:

- (1) An individual's verifiable participation in any federal or state low-income assistance program, specified in PUCO rules, that limits assistance based on household income;
- (2) Other verification that an individual's household income is at or below 150% of the federal poverty level.

The PUCO is required under the act to establish requirements in rules for the implementation of automatic enrollment of eligible individuals and to work with the appropriate state agencies that administer federal or state low-income assistance programs and with carriers to get information to verify eligibility and the data necessary for automatic enrollment. The act also requires every ILEC required to implement lifeline service to implement automatic enrollment in accordance with PUCO rules and to the extent that state agencies are able to accommodate the automatic enrollment.

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

The act permits ILECs required to implement lifeline service to recover, from end users of the carriers' telecommunications service other than lifeline customers, any lifeline service discounts and other lifeline service expenses prescribed by PUCO rule that are not recovered through federal or state funding, except for expenses for lifeline marketing, promotion, and outreach. This recovery is to be done by a method approved by the PUCO. The act requires a carrier seeking recovery of lifeline discounts and expenses, in accordance with PUCO rules, to apply to the PUCO for approval of the method of recovery. If the method includes a customer billing surcharge, the PUCO is to prescribe by rule how the surcharge is to be identified on customers' bills.

Finally, the act requires every ILEC required to implement lifeline service to annually file a report with the PUCO identifying the number of customers who, at the time of the filing, receive lifeline service.

Rates, terms, and conditions for certain services

Carrier access

(R.C. 4927.15)

The act requires that the rates, terms, and conditions for 9-1-1 service provided in Ohio by a telephone company or a telecommunications carrier, and for carrier access,²⁵

²⁵ The act revises the definition of "carrier access" and removes it from inclusion as basic local exchange service. Under the act, 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

N-1-1 service (other than 9-1-1 service), pole attachments and conduit occupancy, pay telephone access lines, toll presubscription, and telecommunications relay service, all provided in Ohio by a telephone company, be approved and tarified in the manner prescribed by PUCO rule and be subject to the applicable laws, including PUCO and FCC rules, regulations, and orders.

The act permits the PUCO to order changes in a telephone company's rates for carrier access in Ohio. But the act provides that in the event that the PUCO reduces a telephone company's rates for carrier access that are in effect on the act's effective date, the reduction must be on a revenue-neutral basis under terms and conditions established by the PUCO. The act authorizes the PUCO to address carrier access policy and to create and administer mechanisms for carrier access reform, including high cost support. The act also specifies that any resulting rate changes necessary to comply with these carrier access provisions are to be in addition to any rate adjustment authorized under the provisions described above regarding annual rate alterations.

Unbundling of network elements

(R.C. 4927.16; 4905.041 (repealed))

The act 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 act 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 existed in a section of the Revised Code repealed by the act. The act relocates them to the new Chapter 4927.

Notice of material change in rates

(R.C. 4927.17)

The act 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." The act provides that this 15-day notice requirement is an exception to the act's provision requiring 30-days notice for alterations of rates for basic local exchange service, and, if applicable, an exception to any PUCO rules adopted for the Community-voicemail Service Pilot Program.

communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks and includes special access." (R.C. 4927.01.)

Contact information for PUCO and OCC

(R.C. 4927.17)

The act requires telephone companies to inform customers of the PUCO's toll-free number and e-mail address on all bills and disconnection notices, and residential customers of the OCC's toll-free number and e-mail address on all residential bills and disconnection notices.

Toll service provider discounts

(R.C. 4927.14)

The act 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.²⁶

Telephone instruments for inmates

(R.C. 4927.18)

The act 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.

Investigations and adjudications

PUCO investigations of telephone companies

(R.C. 4927.19)

The act 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 act. The act 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,

²⁶ The act 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.)

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 4927.21; Section 4)

Law repealed and replaced by the act, set 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 alleged 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 was, or would be, in any respect unreasonable, unjust, discriminatory, or preferential, or that any service was, or would be, inadequate or unobtainable.

The act replaces those provisions with new provisions permitting any person to file a complaint with the PUCO alleging that any rate, practice, or service of a telephone company (other than a wireless service provider) is unjust, unreasonable, unjustly discriminatory, or in violation of or noncompliance with any of the act'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 act 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 act's provisions to be brought by a filing pursuant to this complaint-filing procedure.²⁷

The act 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 act 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 act's provisions, the rate, practice, or service to be adopted and observed, including any appropriate remedy for a complaint;

²⁷ The act does provide, however, that any complaint filed under the repealed 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 act.)

(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 a separate offense, and all occurrences of a violation or failure on each such day are deemed one violation. All forfeitures are cumulative, and the act 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 act 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 requirements regarding PUCO operations;

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

The act 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 act 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.

Various telecommunication and other changes

Compliance with PUCO orders, directions, and requirements

(R.C. 4927.20)

The act requires that, to the extent they are subject to the PUCO's jurisdiction under the act's provisions in the new Chapter 4927., all of the following must comply with every order, direction, and requirement of the PUCO made under the authority of the new chapter: (1) every telephone company, including every wireless service provider, (2) every telecommunications carrier, and (3) every provider of internet protocol-enabled services, including voice over internet protocol.

Annual reports

(R.C. 4905.14 and 5733.57)

Continuing law requires "public utilities" to file an annual report with the PUCO. The act 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 act also provides that for telephone companies, including wireless service providers, the information required in the report is to be limited to the information necessary to calculate the PUCO assessments. For telephone companies subject to continuing law governing pole attachments and conduit occupancy, the act requires the PUCO to adopt rules that require those telephone companies to also include in the annual report information required by the PUCO to calculate pole attachment and conduit occupancy rates and any other information the PUCO determines necessary and requires by rule for this purpose. The act also states that the PUCO must protect any confidential information in every company and provider report.

Telephone company lines and facilities

(R.C. 4931.01 to 4931.05)

The act permits telephone companies to construct, including in unincorporated areas of townships, and to own, use, and maintain, telecommunications lines and facilities and to enter on and appropriate land for lines and facilities. The act also 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 act also removes related references to telegraph companies and telegraph lines (see "**Telegraph companies**," below).

Application of telephone law to electricity generation and service

(R.C. 4933.14)

Under law changed by the act, certain powers granted to, and certain requirements and restrictions imposed on, telephone and telegraph service also applied to (1) companies organized for supplying electricity only if they transmitted or distributed electricity, (2) companies organized for supplying public and private buildings, manufacturing establishments, streets, alleys, lanes, lands, squares, and public places with electric power, and (3) automatic package carriers. The act, as

described below under "**Telegraph companies**," repeals many of those requirements and restrictions as they applied to telegraph companies, with the effect that those provisions repealed no longer apply to those entities described in (1) to (3) above. The act clarifies, however, that companies described in (1) above retain the authority to enter upon and appropriate land as described for telephone companies in the act. Companies described in (2) and (3) above also retain their authority regarding the construction, maintenance, and use of lines and facilities as described for telephone companies in the act. (See "**Telephone company lines and facilities**," above.)

Granting property for public purposes

(R.C. 4905.34)

The act specifies that, with certain exceptions in continuing law, new Chapter 4927. does not prevent a public utility or railroad from granting its property for public purposes or from granting free or reduced-rate service to a governmental entity, for charitable purposes, and other similar reasons.

Filing of contracts with telephone management, service, or operating companies

(R.C. 4905.16)

Continuing law requires that every public utility 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 act preserves this provision, but removes another requirement 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 act removes a provision of law that required every telephone company to carry a proper and adequate depreciation or deferred maintenance account.

Filing of rate schedules

(R.C. 4905.30)

Continuing 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 act 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), 4927.12 (annual rate alterations), 4927.13 (lifeline service), 4927.14 (discounts for operator-assisted and direct-dial services for persons with communication disabilities), 4927.15 (carrier access and other services), 4927.18 (inmate telephone service), and 4931.47 (9-1-1 service).

Approval for acquisitions and mergers

(R.C. 4905.402; R.C. 4905.49 (repealed))

The act repeals law that authorized consolidations between telephone companies if the consolidation would promote public convenience and furnish the public adequate service for a reasonable rate, rental, toll, or charge. The act instead prohibits a domestic telephone company from merging with another domestic telephone company unless the merging companies obtain the prior approval of the PUCO. Merger applications are to be handled in the same manner as acquisition applications are to be handled under continuing law. This process involves gaining 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. The act applies continuing law governing enforcement actions regarding those merger and acquisition laws by the Ohio Attorney General, and jurisdiction of Ohio courts to hear those actions, to any merger and acquisition rules adopted by the PUCO.

Electronic monitoring devices

(R.C. 2929.01)

Continuing law requires electronic monitoring devices to have receivers that can continuously transmit signals by telephone to a central monitoring computer. The act permits the transmission to occur by wireless or landline telephone connection. The act also requires an offender-monitoring device to be designed for electronic monitoring. It also prohibits the device from being a converted wireless phone or tracking device not designed for electronic monitoring. Finally, it requires the device to provide a means of text-based or voice communication.

Select Committee on Telecommunications Regulatory Reform

(Section 5)

The act creates the eight-member Select Committee on Telecommunications Regulatory Reform consisting of the chairperson and ranking minority member of the Senate committee to which legislation pertaining to public utilities is referred, the chairperson and ranking minority member of the House of Representatives committee to which legislation pertaining to public utilities is referred, the chairperson of the PUCO or an officer or employee of the PUCO who serves as the chairperson's designee, the Consumers' Counsel or an officer or employee of the Office of the Consumers' Counsel who serves as the Counsel's designee, and two members appointed by the Governor, one of whom is a member of the Governor's staff and one of whom is a representative of the telecommunications industry. The act requires the Governor to make appointments to the Committee not later than 60 days after the act's effective date. Vacancies on the Committee are to be filled in the manner provided for original appointments.

The act names as co-chairpersons of the Committee the members who serve as chairpersons of the House and Senate public utility committees. The co-chairpersons are responsible for scheduling the Committee's meetings and determining the time, meeting location, and agenda for them. The act requires the PUCO to cooperate with the Committee and provide reports and any other information that the Committee requests and permits the Committee to request assistance from the Legislative Service Commission.

The act requires the Committee to review the economic benefits of the act and its impact on jobs, telephone company rates, telephone company quality of service, lifeline program customers, rural markets, rural broadband deployment, and carrier access to private property. The Committee is also to report on the Community-voicemail Service Pilot Program. It requires the Committee to submit a written report of its findings and recommendations to the General Assembly and the Governor no later than four years after the effective date of the act, at which time the Committee will cease to exist.

Repeals consistent with PUCO limited jurisdiction over telephone company service quality

Inadequate service and service standards

(R.C. 4905.23 to 4905.25)

The act repeals law that required 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 law that permitted the PUCO to make investigations as it deemed necessary and ascertain and prescribe reasonable standards of telephone service. The act also repeals law that authorized 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 act repeals law that allowed for petitions for a change in service or for service in an area without service. Law that governed 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 act repeals law that permitted the PUCO to order repairs and improvements in telephone service.

Power to form continuous lines

(R.C. 4905.50)

The act repeals law that permitted the PUCO to require any two or more telephone companies whose lines or wires formed a continuous line of communication, or could be made to form a continuous line of communication, between different localities that could not be communicated with or reached by the lines of either company alone, where service was 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 act repeals law that prohibited 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 act also repeals law that prohibited a person connected with a telephone company from willfully divulging a private telephone message.

Party lines yielded in emergencies

(R.C. 4931.30)

The act repeals law that required the yielding of party lines in emergencies.

Threat and harassment

(R.C. 4931.31)

The act repeals law that prohibited threat or harassment over the telephone.

Inter-utility transactions and merger petition denial

(R.C. 4905.491)

The act repeals law that allowed 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, 4905.402, 4905.58, 4905.59, 4905.71, 4905.84, 4905.90, 4907.01, 4907.14, 4907.30, 4909.01, 4909.02, 4909.03, 4909.17, 4921.01, 4923.01, 4929.02, 4931.06, 4931.07, 4931.12 to 4931.19, 4931.21, 4931.22, 4931.25 to 4931.28, 4931.99, 4933.14, 4933.18, 4933.19, 4939.01, 5515.01, 6101.17, and 6115.21)

The act removes certain references in and provisions of 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, 4905.02, 4907.01, 4909.01, 4911.01, 4921.01, and 4923.01)

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

COMMENT

1. While the act establishes that certain acts are to be unfair or deceptive acts or practices in connection with the offering of telecommunications service by a telephone company, it excludes wireless service from these provisions. For wireless service, the act states, in Title 49 of the Revised Code, that a consumer purchase of wireless service or a related product is to constitute a consumer transaction for purposes of R.C. 1345.01 to 1345.13 (the Consumer Sales Practices Act or CSPA), "notwithstanding any provision of those sections to the contrary." (R.C. 4927.06.) The CSPA under continuing law states that it does not apply to consumer transactions between telephone companies

and their customers (R.C. 1345.01). But the act does not amend the CSPA to reference the exception created for wireless service in Title 49.

2. For not yet commercially available telecommunication service (that is, service that is not commercially available on the act's effective date and that employs technology that becomes available for commercial use after the effective date), the act states in Title 49 of the Revised Code that a consumer purchase of such service is to constitute a consumer transaction for purposes of the CSPA, "notwithstanding any provision of those sections to the contrary, unless the commission exercises jurisdiction over the service" (R.C. 4927.03(A).) As discussed in **COMMENT 1**, the CSPA does not apply to transactions between telephone companies and their customers. If such service later becomes commercially available and the PUCO is not exercising jurisdiction, the CSPA still would appear to exclude such a transaction from its coverage because the act does not amend the CSPA to indicate the exception or include the transaction.

HISTORY

ACTION	DATE
Introduced	08-27-09
Reported, S. Energy & Public Utilities	12-15-09
Passed Senate (29-3)	12-15-09
Reported, H. Public Utilities	06-02-10
Passed House (98-0)	06-03-10
Senate concurred in House amendments (31-1)	06-03-10

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