Ohio Legislative Service Commission

Bill Analysis

Maura McClelland

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BILL SUMMARY

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

PUCO jurisdiction over telecommunications

- Specifies that the PUCO, except as provided in the bill and federal law, has no authority over an interconnected voice over internet protocol-enabled service or a telecommunications service (1) that is not yet commercially available on the bill'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 not yet commercially available telecommunications services that employ new technology subject to the Consumer Sales Practices Act, notwithstanding any provision of the act 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 provided under certain Ohio statutes, specifically those 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 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 bill 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 current statutes 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 bill.

- Specifies that, with certain exceptions, the new telecommunications provisions in the bill 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 yet commercially available on the bill's effective date and that employs technology that became available for commercial use after the bill'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 bill.

- Permits the PUCO to adopt various rules that it finds necessary to carry out the provisions of the bill, including rules that address the removal from tariffs of services that were required to be filed in tariffs prior to the bill's effective date.

- Provides that the PUCO must adopt any rules required under the bill no later than 120 days after the bill'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 Telecommunications Act of 1996, arbitrating disputes and approving agreements under the 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 bill'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 notwithstanding any provision of the act to the contrary.
- Makes failure to include the following in a telephone company solicitation, offer, contract, or other communication as provided in the bill 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.
- 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 bill 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 provide notice to 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 bill'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 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 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 current PUCO rules 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 current law.

- Prohibits banking of upward rate alterations.

- Permits ILECs owned and operated exclusively by and for its 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.

- Permits an ILEC required to implement lifeline service to establish a surcharge, applied to end users of the carrier's telecommunications service other than lifeline customers, to recover lifeline service discounts and any other lifeline service expenses that the PUCO prescribes by rule and that are not recovered through federal or state funding, and permits the PUCO to review the surcharge to prevent overrecovery, but prohibits ILECs from specifically referencing a surcharge on a customer's bill.

- 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 tariffed 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 bill'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 bill's provisions where 30-days notice is required, 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 may 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 bill's provisions or a PUCO rule or order.

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

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

- Requires the PUCO to adopt rules that require a telephone company subject to 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.

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

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

- Requires telephone companies to file rate schedules only for the following rates: charges for use of attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of attachments in conduit duct space, basic-local-exchange-service rate changes authorized under the bill, lifeline service, community-voicemail assessments, 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.

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

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

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

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

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

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

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

- Repeals a provision of current law requiring party lines to be yielded in an emergency.
- Repeals a provision of current law that prevents threat or harassment over the telephone.
- Repeals a provision of current law permitting PUCO dismissal of a petition for approval of an inter-utility transaction or merger.
- Removes references in and provisions of current law relating to telegraph companies and their regulation by the PUCO.
- Removes defined terms from definition sections in Title 49 that are not used in the applicable chapter.

TABLE OF CONTENTS

CONTENT AND OPERATION

Background--PUCO regulation of telecommunications service

Current 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 currently consist primarily of Chapters 4905., 4909., and 4927. of the Revised Code. Under those chapters, the PUCO regulates "telephone companies" that are "public utilities." As technology has changed over the last 30 years and the telecommunications market has become competitive, the regulatory concept of a "telephone company" has changed. The Legislature reacted to these changes by enacting law providing for alternative regulation of telephone companies, currently codified in Revised Code Chapter 4927.

Current law permits the telecommunications service of a public-utility telephone company[1] to be exempted from all or certain requested portions of the law that

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[1] A "telephone company" is a public utility subject to regulation under Ohio law if it is engaged in the business of transmitting telephonic messages to, from, through, or in Ohio (R.C. 4905.03(A)(1) as re-designated by the bill). For purposes of the new regulatory scheme in the bill, a "telephone company" has the same meaning. The bill, 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 bill's effective date that uses new technology not available until after that date (which services are described later in this analysis).

prescribes the PUCO's authority to regulate public utilities (Chapters 4905. and 4909. of the Revised Code). To qualify for this exemption, a standard of competition must be met. Through a substantial revision of Chapter 4927. and other provisions of current law, the bill revises the statutory framework for the PUCO's regulation of telecommunications service.

State policy

(R.C. 4927.02)

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

The bill leaves unchanged the following policy objectives:

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

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

The bill revises the current policy objectives as follows:

(1) One of the current policy objectives is to "rely on market forces, where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market, to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service." The bill 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]

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

[2] Current law uses the term "public telecommunications service," while the bill uses the term "telecommunications service." "Public telecommunications service" is currently defined as the transmission by a telephone company, by electromagnetic or other means, of signs, signals, writings, images, sounds, messages, or data originating and terminating in Ohio regardless of actual call routing, but does not include a system, including its construction, maintenance, or operation, for the provision of

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

(3) The bill removes the word "public" from the phrase "public telecommunications services" in the following two objectives: (a) promote diversity and options in the supply of public telecommunications services and equipment throughout the state, 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 current policy objectives is to consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services that are subject to the PUCO's jurisdiction. Under the bill, the objective is to "[c]onsider the regulatory treatment of competing and functionally equivalent services and, to the extent practicable, provide for equivalent regulation of all telephone companies and services."

(5) One of the current policy objectives is to protect the affordability of telephone service for low-income subscribers through the continuation of lifeline assistance programs. The bill specifies that the lifeline assistance programs are federal.

The bill 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.

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telecommunications service, or any portion of such service, by any entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale, directly or indirectly; the provision of terminal equipment used to originate or terminate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service. The bill defines "telecommunications service" as the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. "Telecommunications" is defined to mean the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received. (R.C. 4927.01.)

Alternative regulation of telephone companies under current law

Under current law governing alternative regulation of telephone utilities (R.C. 4927.01 to 4927.05), the PUCO may, upon its own initiative or upon application of a telephone company, exempt a telephone company as to any public telecommunications service, including basic local exchange service, from any provision governing the powers of the PUCO,[3] any provision governing the fixation of public-utility rates,[4] certain provisions governing telegraph and telephone companies,[5] or any rule or order adopted or issued under those provisions. But there are a number of statutes from which the PUCO may not exempt a telephone company with regard to basic local exchange service.[6] The PUCO may also establish alternative regulatory requirements to apply to the exempted public telecommunications service and company. To take any of these actions, the PUCO must find that the action is in the public interest and that either (1) the telephone company is subject to competition with respect to the service or (2) the customers of the service have reasonably available alternatives. Current law sets forth a number of factors for the PUCO to consider in determining whether these conditions are met. To authorize an exemption or establish alternative regulatory requirements for basic local exchange service, the PUCO must also find that there are no barriers to entry to the market.

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

Current law also specifies that the PUCO has jurisdiction over every telephone company that receives an exemption or to which alternative regulatory requirements apply. Consequently, this law authorizes the PUCO to, after notice and hearing, change any order that granted an exemption or established alternative requirements if the PUCO determines that the findings upon which the order was based are no longer valid and that the change is in the public interest. But the PUCO may not make such a change more than five years after the order was entered into, unless the affected telephone company consents. Current law also permits the PUCO to adopt rules to carry out the alternative-regulation laws described above.

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[3] R.C. Chapter 4905.

[4] R.C. Chapter 4909.

[5] R.C. 4931.01 to 4931.35.

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

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

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

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

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

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

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

Current law also provides that any person may request a hearing on the application. The PUCO is also permitted to, upon the application of any telephone company that is an incumbent local exchange carrier (ILEC)[7] with fewer than 50,000

[7] Ohio law and the bill use the federal definition of an "incumbent local exchange carrier," which is the local exchange carrier that, on February 8, 1996 (the date of enactment of the federal Telecommunications Act of 1996), provided telephone exchange service in that area and (1) was deemed to be a member of the

access lines, to exempt the company from certain statutes[8] or establish alternative regulatory requirements. The PUCO must find that the alternative requirements are in the public interest. The PUCO, in carrying out these provisions, may use different methods of establishing rates and charges of different companies, if the methods are reasonable and do not confer any undue economic, competitive, or market advantage or preference upon any company. The PUCO is also authorized to adopt rules to carry out the provisions.

PUCO jurisdiction over telecommunications

Replacing alternative regulation

The bill repeals the alternative-regulation sections described above. In its place, the bill 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 bill requires that the PUCO initially adopt rules to implement those new provisions not later than 120 days after the bill's effective date. It authorizes the PUCO, subject to the authority granted it under the chapter, to adopt such other

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exchange carrier association under federal regulations or (2) on or after February 8, 1996, became a successor or assign of a member of the exchange carrier association. The bill defines "telephone exchange service" to mean telecommunications service that is within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and that is covered by the exchange service charge; or comparable service provided through a system of switches, transmission equipment, or other facilities, or combination thereof, by which a customer can originate and terminate a telecommunications service. (R.C. 4927.01.)

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

[9] In various sections of Chapters 4901., 4903., and 4905. of the Revised Code included in the bill, the PUCO also is authorized to carry out the purposes of certain chapters of Title 49 of the Revised Code. The bill 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.

rules as it finds necessary to carry out the chapter.[10] The bill also requires the PUCO, coincident with the adoption of the initial rules, to rescind the following rules and file the requisite notice of the rescissions with the Legislative Service Commission and the Secretary of State within five days: O.A.C. Chapters 4901:1-4 (alternative 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 bill, rescission of these rules will take effect as provided by law and, notwithstanding any other provision of the Revised Code, is not subject to legislative review or invalidation. And, the bill prohibits the PUCO from taking enforcement action, on or after the bill's effective date, against any telephone company, as defined in R.C. 4905.03 as amended, regarding any provision of any of the above rules required to be rescinded, except for Rule Nos. 4901:1-5-09, 4901:1-6-18, and 4901:1-6-24 and related definitions and the rule governing basic local exchange service pricing as that rule existed on the bill's effective date.

PUCO jurisdiction

(R.C. 4927.03)

Service jurisdiction

The bill 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 bill specifies that, except as provided under the bill'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 that act, and except to the extent that the PUCO is required to exercise authority under federal law, the PUCO

[10] The bill 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 bill's effective date (R.C. 4927.03(E)).

has no authority over any interconnected voice over internet protocol-enabled service[11] or any telecommunications service that is not commercially available on the bill'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 bill 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 bill also specifies that a consumer purchase of such not commercially available service constitutes a consumer transaction for purposes of the Consumer Sales Practices Act (R.C. 1345.01 to 1345.13), notwithstanding any provision of the act to the contrary, unless the PUCO exercises jurisdiction over the service by rules adopted as described above.

Wireless jurisdiction

Regarding wireless service, resellers of wireless service, or wireless service providers,[12] the bill 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 bill 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 that act, administering telephone numbers and number portability, certifying telecommunications carriers eligible for universal-service funding

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[11] 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 analysis.

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

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 bill requiring wireless service provider registration with the PUCO before operating in Ohio (R.C. 4927.05), (3) as provided in a section of the bill 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 bill requiring compliance with PUCO orders, directions, and requirements (R.C. 4927.20).

The bill also specifies that wireless service providers are subject to the assessments on public utilities to fund PUCO operations and the filing of annual reports with the PUCO that aid the PUCO in calculating wireless service provider assessments for PUCO operations (R.C. 4905.10 and 4905.14) (see "**Annual reports**," below). Wireless service providers are also subject to assessments to fund OCC operations (R.C. 4911.18).[13]

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

Telephone company jurisdiction

The bill 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

[13] A technical amendment to R.C. 4927.03(B)(3) is needed so that the cross-reference to R.C. 4911.20 correctly refers to R.C. 4911.18.

(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 bill 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 bill))

The bill amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of advanced services, including a telephone company. The bill 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 bill's exclusion of any provider of advanced services as a "public utility" under Chapter 4905. affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

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

Broadband service

(R.C. 4905.02)

The bill amends the definition of "public utility" in R.C. Chapter 4905. to exclude any provider of broadband service, including a telephone company. The bill refers to

[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.

"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 bill's exclusion of any provider of broadband service as a "public utility" affects authority under those other chapters and sections, as well as PUCO authority under Title 49.

Information service

(R.C. 4905.02)

The bill amends the definition of "public utility" to exclude any provider of information service, including a telephone company. The bill 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, 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 bill'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 bill 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 bill's effective date and that employs technology that became available for commercial use after that date.[15] 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 bill's exclusion of any provider of such services as a

[15] A technical amendment is needed to correct a cross-reference error in R.C. 4905.02(E)(5). The reference should be to R.C. 4927.03(A) instead of (B).

"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 bill, "internet protocol-enabled services" means any services, capabilities, functionalities, or applications that are provided using internet protocol or a successor protocol to enable an end-user to send or receive 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 bill as a service that uses a broadband connection from an end user's location and enables real-time, two-way, voice communications that originate or terminate from the user's location using internet protocol or a successor protocol, including, but not limited to, any such service that permits an end user to receive calls from and terminate calls to the public switched network.

The bill amends the definition of "public utility" to exclude 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 bill'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 bill removes the provisions of current law that expressly vest the PUCO with such power and jurisdiction as is reasonably necessary for it to perform the acts of a state commission under federal law. Instead, the bill establishes that the PUCO has such power and jurisdiction as is reasonably necessary for it to perform the obligations authorized by or delegated to it under federal law, including federal regulations. The bill specifies that these obligations include performing the acts of a state commission as defined in the federal 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 carriers[16] 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;

(7) Outage reporting consistent with federal requirements.

The bill states that except as provided in a provision of the bill governing wireless jurisdiction,[17] the PUCO has power and jurisdiction under these provisions over a telecommunications carrier to the extent necessary to perform the seven listed obligations. The bill 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)

Current PUCO rules require all telephone companies, except commercial mobile radio service providers, to be PUCO-certified. Minimum requirements for certification include (1) a certificate of good standing and certificate to operate as an out-of-state entity issued by the Ohio Secretary of State and, if applicable, fictitious name

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[16] The bill 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.

[17] A technical amendment to the last paragraph of R.C. 4927.04 is needed to correct a cross-reference to the division of the bill that pertains to PUCO authority over wireless service, wireless resellers, and wireless service providers. The reference to R.C. 4927.03(C) should be corrected to R.C. 4927.03(B).

authorization, (2) full address and telephone number, and if available, e-mail address and web site, (3) verification of compliance with any applicable affiliate transaction requirements, (4) verification that the applicant will maintain accounting records pursuant to generally accepted accounting principles, (5) documentation attesting to the applicant's satisfactory technical expertise relative to the proposed service offerings, (6) documentation indicating the applicant's satisfactory corporate structure, managerial expertise, and ownership, (7) information pertaining to any similar operations provided by the applicant in other states, (8) evidence of notice to the Ohio Department of Taxation, Public Utilities Tax Division, of its intent to provide service, (9) any waivers from PUCO retail telecommunications service rules, and (10) documentation attesting to the applicant's financial viability including, at a minimum, an actual and pro forma income statement and balance sheet.

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

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

The bill requires, as a condition of operating in Ohio, that a telephone company obtain a certificate from the PUCO, and that a wireless service provider register with the PUCO. The bill exempts ILECs, with respect to their geographic service areas as those areas existed on the bill'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 bill permits the PUCO to suspend or reject the certification application of a telephone company if it finds, within 30 days after the application's submission, that the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service to the public consistent with law.

A telephone company not holding a certificate, or a wireless service provider not registered, on the effective date of the bill, must file a certificate application or registration application, each in a manner set forth in PUCO rules. Certificates and registrations are to be updated in the manner set forth in rules to be adopted by the PUCO. 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 current law unchanged by the bill, the Consumer Sales Practices Act is not applicable to telephone companies and other companies to which Ohio public utility law applies. That act governs unfair, deceptive, and unconscionable acts or practices involving consumer transactions. A current PUCO rule (O.A.C. 4901:1-5-04),[18] which the bill requires to be rescinded, delineates unfair and deceptive acts and practices for "telecommunications providers," meaning a telephone company that provides telecommunications services other than commercial mobile radio service (except fixed wireless service) under the PUCO's jurisdiction. The acts and practices under the current rule are largely similar to those of the bill, except that the rule requires a telecommunications provider to address a customer's billing or service inquiry at the time that the customer calls, to discontinue any sales discussion upon a customer's request, and not to engage in sales practices when a customer calls to report service

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

problems or to make payment arrangements, until the telecommunications provider first confirms that it has completely responded to the customer's concerns.

The bill 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 bill specifies that a failure to comply with any of the following constitutes an unfair or deceptive act or practice:

(1) Any communication by the company must be truthful, clear, conspicuous, and accurate in disclosing any material terms and conditions of service and any material exclusions or limitations.

(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.

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

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

Service withdrawal/abandonment

(R.C. 4927.07)

The bill 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 bill 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 bill 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 bill 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 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 bill requires that a telephone company providing basic local exchange service conduct its operations as to ensure that the service is available, adequate, and reliable, consistent with applicable industry standards.[19] The PUCO is to adopt rules

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

The bill also alters the definition of "local service area" (as that term is used in basic local exchange service) to mean the "geographic area that may encompass more than one exchange area and within which a telephone customer, by paying the rate for basic local exchange service, may complete calls to other telephone customers at no additional charge." (R.C. 4927.01.)

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

prescribing 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 bill specifies that no other rules regarding basic local exchange service may be adopted except as expressly authorized by the bill's provisions. Under the bill, 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 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.

(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 bill 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 bill 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 bill 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 bill 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 bill requires the PUCO to adopt rules to implement the waiver provisions.

The bill 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 bill's complaint provisions (see "**Filing of complaints with PUCO**," below). In resolving such a complaint, the PUCO's determination is to be limited to whether any circumstance warranting 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 bill permits the PUCO to establish, by rule, a process for determining a necessary successor telephone company to provide service to the real estate described above when the circumstance for service refusal no longer exists.

The bill 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 bill limits the total amount of upward alterations in a 12-month period to the amount authorized for an annual increase under current PUCO rules governing alternative regulation of telephone companies.[20] If the ILEC's exchange area[21] to which the alteration would apply previously qualified for alternative regulation of basic local exchange service under current PUCO rules governing alternative regulation of telephone companies,[22] the ILEC is permitted to upwardly alter rates for basic local exchange service in that exchange area immediately upon the bill'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 bill'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 bill's effective date for that exchange area, the ILEC may not institute an upward alteration under the bill for that exchange 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 bill 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

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[20] This amount is $1.25 (O.A.C. 4901:1-4-11(A)).

[21] The bill defines "exchange area" as a geographical service area established by an ILEC and approved by the PUCO.

[22] O.A.C. Chapter 4901:1-4 (to be rescinded by the bill).

bill 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 bill prohibits banking of permissible upward rate alterations in all situations.

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

Current PUCO rules regarding basic local exchange service exempt lifeline customers from rate increases for basic local exchange service. Specifically, the rule provides 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."[23] The bill requires that this rule be rescinded.[24] Though the bill 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.

Access to 9-1-1 service after disconnection

(R.C. 4927.09)

The bill 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 program

(R.C. 4927.10)

The bill requires the PUCO to implement community-voicemail service for individuals who are in a state of transition and have no access to traditional telephone

[23] O.A.C. 4901:1-4-11(D).

[24] Section 3 of the bill.

exchange service or readily available alternatives. The bill specifies that these individuals include the homeless, clients of battered-spouse programs, and displaced 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 bill's effective date. Preference is to be given to non-profit vendors. Contracts for the service must be for five years or less, and the total amount permitted for the program under all contracts is not to exceed $1 million.

To fund the program, the bill requires the PUCO to impose annual assessments on each telephone company that is a local exchange carrier,[25] beginning before July 1, 2011. The assessments are to be allocated proportionately using a competitively neutral formula established in PUCO rules and 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 assessments.

The PUCO is to annually reconcile the assessments with the actual costs of the provision of the community-voicemail service for the previous year. Any amounts not sufficient to cover the actual costs are to be proportionately charged and any amounts collected in excess of actual costs are to be proportionately credited. The total amount assessed is not to exceed the total costs of the provision of the community-voicemail service for the previous year. The bill creates the Community-Voicemail Service 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.

The bill permits local exchange carriers to recover assessments. The method of recovery may include a customer billing surcharge, but the bill prohibits any such surcharge from being specifically referenced on a customer's bill.

The bill 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 bill requires forfeitures to be recovered in accordance with current law governing collection of forfeitures.

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[25] The bill 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 bill permits the PUCO to adopt rules as it finds necessary to carry out the community-voicemail program. It also requires the PUCO to adopt rules to establish the competitive bidding process and assessment amounts and procedures under current rulemaking-procedure law that does not require public notice or hearing (R.C. 111.15).

Lifeline service

(R.C. 4927.13)

The bill 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 bill specifies that lifeline service is to consist of all of the following:

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

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

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

The bill permits a carrier to offer to lifeline service customers any other services and bundles or packages of services[26] at prevailing prices, less the lifeline discount. The bill also requires that the rates, terms, and conditions for the ILEC's lifeline service are to be tariffed in the manner prescribed by PUCO rule. In addition, the bill 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 bill 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 bill requires all funds in the lifeline marketing budget to be spent only for the purposes of promotion and

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[26] The bill 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).

marketing of, and outreach regarding, lifeline service and prohibits their use for any administrative costs for implementation of lifeline service. All aspects of the ILECs' state-specific lifeline service must be consistent with federal requirements.

Lifeline Advisory Board

The bill 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 bill 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 bill, 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 bill 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 bill 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 bill 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 bill permits ILECs required to implement lifeline service to establish a surcharge, applied to end users of the carrier's 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. The bill grants the PUCO the authority to review the surcharge, which is to be established to prevent overrecovery by carriers. The bill also prohibits ILECs from specifically referencing the surcharge on a customer's bill.

Finally, the bill 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 bill 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,[27] 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 tariffed in the manner prescribed by PUCO rule and be subject to the applicable laws, including PUCO and FCC rules, regulations, and orders.

The bill permits the PUCO to order changes in a telephone company's rates for carrier access in Ohio. But the bill provides that in the event that the PUCO reduces a telephone company's rates for carrier access that are in effect on the bill's effective date, the reduction must be on a revenue-neutral basis under terms and conditions established by the PUCO. The bill authorizes the PUCO to address carrier access policy and to create and administer mechanisms for carrier access reform, including high cost support. The bill 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.

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[27] The bill revises the definition of "carrier access" and removes it from inclusion as basic local exchange service. Under the bill, carrier access is defined as "access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks and includes special access." (R.C. 4927.01.)

Unbundling of network elements

(R.C. 4927.16; 4505.041 (repealed))

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

Notice of material change in rates

(R.C. 4927.17)

The bill requires a telephone company to provide at least 15-days advance notice to its affected customers of any material change in the rates, terms, and conditions of a service and any change in the company's operations "that are not transparent to customers and may impact service." The bill provides that this 15-day notice requirement is an exception to the bill's provision requiring 30-days notice for alterations of rates for basic local exchange service.[28]

Contact information for PUCO and OCC

(R.C. 4927.17)

The bill 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.

[28] A technical amendment to R.C. 4927.17(A) is needed to correct a cross-reference to this exception from R.C. 4927.10 to R.C. 4927.12.

Toll service provider discounts

(R.C. 4927.14)

The bill permits the PUCO to adopt rules requiring any telephone company that is a telephone toll service provider to offer discounts for operator-assisted and direct-dial services for persons with communication disabilities.[29]

Telephone instruments for inmates

(R.C. 4927.18)

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

Investigations and adjudications

PUCO investigations of telephone companies

(R.C. 4927.19)

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

Filing of complaints with PUCO

(R.C. 4905.26 and 4927.21; Section 4)

Current law sets forth a procedure for the filing and hearing of complaints by subscribers to any telephone exchange, or by the legislative authority of any municipal corporation served by a telephone company. Such complaints are described in current

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

law as alleging that any regulation, measurement, standard of service, or practice affecting or relating to any service furnished by the telephone company, or in connection with such service is, or will be, in any respect unreasonable, unjust, discriminatory, or preferential, or that any service is, or will be, inadequate or cannot be obtained.

The bill repeals these provisions and replaces them;[30] specifically the bill permits 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 bill's provisions or a PUCO rule or order adopted under those provisions. It also permits the PUCO to initiate such a complaint against a telephone company other than a wireless service provider. Further, the bill permits any dispute between telephone companies, between telephone companies and wireless service providers, or between wireless service providers that is within the PUCO's jurisdiction under the bill's provisions to be brought by a filing pursuant to this complaint-filing procedure.

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

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

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

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

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

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

(1) If the PUCO determines, after notice and an opportunity for hearing, that the telephone company has failed to comply with the annual reporting and assessment requirement 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 bill specifies that the PUCO has authority to order credits to a customer only in response to a complaint determined in accordance with these provisions governing the complaint procedure.

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

Various telecommunication and other changes

Compliance with PUCO orders, directions, and requirements

(R.C. 4927.20)

The bill requires that, to the extent they are subject to the PUCO's jurisdiction under the bill'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)

Current law requires "public utilities" to file an annual report with the PUCO. The bill removes a provision in that law authorizing the PUCO to require a telephone company to file supplemental reports of each exchange area it owns or operates and removes the requirement that the PUCO require such supplemental report if 15% of the subscribers of an exchange request it. The bill also provides that for 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 current law governing pole attachments and conduit occupancy, the bill 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 bill 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)

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

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

Application of telephone law to electricity generation and service

(R.C. 4933.14)

Under current law, certain powers granted to, and certain requirements and restrictions imposed on, telephone and telegraph service also apply to (1) companies organized for supplying electricity only if they transmit or distribute 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 bill, as described below under "**Telegraph companies**," repeals many of those requirements and restrictions as they apply to telegraph companies, with the effect that those provisions repealed would no longer apply to those entities described in (1) to (3) above. The bill clarifies, however, that companies described in (1) to (3) above retain the authority they have under current law to enter upon and appropriate land as described for telephone companies in the bill. Companies described in (2) and (3) above also retain their current authority regarding the construction, maintenance, and use of lines and facilities as described for telephone companies in the bill. (See "**Telephone company lines and facilities**," above.)

Granting property for public purposes

(R.C. 4905.34)

Current law specifies that, with certain exceptions, certain chapters of the Revised Code governing public utilities and railroads (Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923.) do 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. The bill adds new Chapter 4927. to the list of chapters that do not prevent a public utility or railroad from taking these actions.

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

(R.C. 4905.16)

Current 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 bill preserves this provision, but removes a provision of current law that states that unless otherwise ordered by the PUCO each telephone company must file (with the PUCO) a copy of any contract, agreement, note, bond, or other arrangement entered into with any telephone management, service or operating company.

Depreciation or deferred maintenance accounts

(R.C. 4905.18)

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

Filing of rate schedules

(R.C. 4905.30)

Current law requires every public utility to print and file with the PUCO schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. The bill specifies that this requirement applies to a telephone company only regarding rates, joint rates, tolls, classifications, charges, rules, and regulations established pursuant to R.C. 4905.71 (charges for use of attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of attachments in conduit duct space), 4927.12 (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 bill repeals a section of current law (R.C. 4905.49) authorizing consolidations between telephone companies if the consolidation will promote public convenience and will furnish the public adequate service for a reasonable rate, rental, toll, or charge. The bill instead prohibits a domestic telephone company from merging with another domestic telephone company unless the merging companies obtain the prior approval of the PUCO. Merger applications are to be handled in the same manner as acquisition applications are to be handled under existing 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 bill applies existing 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)

Current law requires electronic monitoring devices to have receivers that can continuously transmit signals by telephone to a central monitoring computer. The bill permits the transmission to occur by wireless or landline telephone connection. The bill 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.

Repeals consistent with PUCO limited jurisdiction over telephone company service quality

Inadequate service and service standards

(R.C. 4905.23 to 4905.25)

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

Ordering of repairs

(R.C. 4905.381)

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

Power to form continuous lines

(R.C. 4905.50)

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

Interference with telegraph or telephone communication

(R.C. 4931.28 and 4931.29)

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

Party lines yielded in emergencies

(R.C. 4931.30)

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

Threat and harassment

(R.C. 4931.31)

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

Inter-utility transactions and merger petition denial

(R.C. 4905.491)

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

Telegraph companies

(R.C. 324.01, 324.03, 1332.24, 4901.01, 4901.11, 4903.01, 4905.03, 4905.12, 4905.20, 4905.21, 4905.402, 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 bill removes certain references in and provisions of current law relating to telegraph companies and their regulation by the PUCO.

Technical change to definition sections in Title 49

(R.C. 4901.01, 4903.01, 4905.01, 4905.02, 4907.01, 4909.01, 4911.01, 4921.01, and 4923.01)

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

COMMENT

1. While the bill 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 bill 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 current law states

that it does not apply to consumer transactions between telephone companies and their customers (R.C. 1345.01). But the bill 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 yet commercially available on the bill's effective date and that employs technology that becomes available for commercial use after the effective date), the bill 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 bill does not amend the CSPA to indicate the exception or include the transaction.

HISTORY

ACTION	DATE
Introduced	09-09-09
Reported, H. Public Utilities	03-16-10
Passed House (95-0)	03-16-10

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