



# Ohio Legislative Service Commission

## Bill Analysis

Maura McClelland

### Sub. H.B. 276\*

128th General Assembly  
(As Reported by H. Public Utilities)

**Reps.** Sayre, B. Williams, Harris, Domenick, Daniels, Grossman, Brown, Huffman, Pillich, Pryor

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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 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 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 service 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 service.
- Provides that the PUCO does not have jurisdiction over wireless service, resellers of wireless service, or wireless service providers, except as provided under certain

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\* This analysis was prepared before the report of the House Public Utilities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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 Office of the Consumers' Counsel 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 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 federal 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 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 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 any 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.

- 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.
- 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 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 a person 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) 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 service 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 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 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 or eligible telecommunications carrier to recover from end users of the carrier's telecommunications service other than lifeline service customers, by a method approved by the PUCO, 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 requires a carrier seeking recovery of these discounts or expenses to apply to the PUCO, in accordance with PUCO rules, for approval of its method of recovery, 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 PUCO and FCC rules 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 Office of the Consumers' Counsel'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, 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.

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## HISTORY

ACTION	DATE
Introduced	09-09-09
Reported, H. Public Utilities	---

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