Ohio Legislative Service Commission

Bill Analysis

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S.B. 271

129th General Assembly
(As Introduced)

Sens. LaRose, Seitz, Jones, Manning, Widener, Eklund, Burke, Coley, Sawyer, Patton, Jordan, Schaffer, Beagle, Hite, Wagoner

BILL SUMMARY

- Permits an incumbent local exchange carrier (ILEC) to withdraw from providing basic landline telephone service, referred to in Ohio law as basic local exchange service (BLES), if the ILEC is a "fully competitive incumbent local exchange carrier" and if at least 90 days' prior notice is given to the Public Utilities Commission (PUCO) and to affected customers.

- Defines fully competitive ILECs by specifying that an ILEC is fully competitive if it has elected that designation through written notification to the PUCO and if either of the following applies to each of the ILEC's exchange areas (referred to in this analysis as Group One and Group Two ILECs):

    - For a Group One ILEC, the PUCO has made a prior determination that the ILEC's exchange area meets the competitive market tests established under PUCO rules for alternative regulation of BLES that existed on September 13, 2010; and

    - For a Group Two ILEC, the PUCO finds that the ILEC's application for the exchange area demonstrates that two or more alternative providers offer, in the same exchange area, service that competes with the BLES offered by the ILEC.

- Sets January 1, 2013, for Group One ILECs, and January 1, 2014, for Group Two ILECs, as the dates before which BLES may not be withdrawn.

- Specifies that, on the applicable BLES withdrawal dates established by the bill, provisions of current law and rules pertaining to standards for BLES do not apply to a fully competitive ILEC or to any other telephone company to the extent that the telephone company provides BLES in the same exchange area.

- Permits a fully competitive ILEC to retire its regulated telecommunications service in the state, including BLES, on or after January 1, 2014, if 90 days' prior notice is given to the PUCO, to the ILEC's wholesale and retail customers, and to any telephone company wholesale provider of its services.

- Excludes from the provisions of the bill ILECs that are *not* competitive, pole attachments and conduit occupancy and related requirements, and interconnection and resale agreements approved under the Telecommunications Act of 1996.

- Permits the PUCO to establish a "competitively neutral and technologically neutral" process by which, and funding mechanism for which, service comparable to service withdrawn or retired from an exchange area may be provided by a single entity in the exchange area in the event that no service comparable to BLES is available.

- Specifies that the rate increase limitations for BLES be applied separately to business and residential classes of service and clarifies that an ILEC may increase the annual BLES rate multiple times in the same exchange area during a single 12-month period, as long as the total amount does not exceed $1.25.

- Requires that notice of BLES withdrawal or the retirement of regulated telecommunications service be provided in a reasonable manner including by bill insert or message, direct mail, or electronic means, if the customer consents, except when reasonably comparable notice is required by, and given in accordance with, federal law or rule.

- Permits notice to the PUCO and affected customers to be provided before the specified BLES withdrawal and service retirement dates so that withdrawal or retirement may take effect on those dates.

- Requires the PUCO, not later than 120 days after the bill's effective date, to amend its rules to conform to the bill's provisions.

CONTENT AND OPERATION

Withdrawal of basic local exchange service (BLES)

The bill makes changes in the state's telecommunications law for basic landline telephone service. Under the bill, an incumbent local exchange carrier (ILEC) that is a "fully competitive ILEC" may withdraw basic local exchange service (BLES) for a telephone exchange area[1] if that ILEC gives at least 90 days' prior notice to the Public Utilities Commission (PUCO) and to its affected customers.[2]

Current law, as revised by Sub. S.B. 162 of the 128th General Assembly, addresses Ohio's telecommunications laws and establishes standards for BLES. Under that law, BLES is defined as residential-end-user access to and usage of telephone-company-provided services over a single line or small-business-end-user access to and usage of such services over the primary access line of service, which in both cases are not bundled or packaged services, that enables the customer to originate or receive voice communications within a local service area as it existed on September 13, 2010. BLES includes services such as local dial tone service; flat-rate telephone exchange service (for residential end users); touch tone dialing service; access to and usage of 9-1-1 services, where available; access to operator services and directory assistance; and provision of a telephone directory.[3]

The requirement that ILECs provide BLES is commonly referred to as the "carrier of last resort (COLR)" or the "provider of last resort (POLR)" requirement. Although neither of these terms is used in the Revised Code, "provider of last resort" is defined in PUCO rule as an "ILEC or successor telephone company that is required to provide basic local exchange service on a reasonable and non-discriminatory basis to all persons or entities in its service area requesting that service."[4]

ILEC-related definitions

In order to be considered a "fully competitive ILEC" under the bill, the ILEC has to have elected the designation as a fully competitive ILEC by written notification to the PUCO. The bill also imposes one of the following requirements on an ILEC (referred to in this analysis as a Group One ILEC or Group Two ILEC) in order to be a fully competitive ILEC:

- The ILEC's exchange area was determined by the PUCO to meet one of a number of competitive market tests and to qualify for alternative regulation of BLES under PUCO rules as they existed on September 13, 2010 (Group One ILEC);[5] or

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[1] R.C. 4927.07(A) and 4927.12(A).

[2] R.C. 4927.07(C).

[3] R.C. 4927.01(A)(1) (not in the bill).

[4] O.A.C. 4901:1-6-01.

[5] R.C. 4927.07(A)(2)(b)(i) and O.A.C. Chapter 4901:1-4 (as it existed on September 13, 2010).

- If the ILEC's exchange area was not previously determined by the PUCO to qualify for alternative regulation, the ILEC demonstrates in an application to the PUCO and the PUCO determines or has been deemed to determine that two or more alternative providers (defined as 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 (Group Two ILEC).[6]

The bill uses the federal definition of an ILEC, which is the local exchange carrier that, on February 8, 1996 (the date of enactment of the federal Telecommunications Act of 1996), provided telephone exchange service in an area and was deemed to be a member of the exchange carrier association under federal regulations or, on or after February 8, 1996, became a successor or assign of a member of the exchange carrier association.[7] Under the bill, "telephone exchange service" is 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.[8]

Dates of BLES withdrawal

The bill sets specific dates after which a fully competitive Group One ILEC may withdraw BLES from an exchange area. BLES may not be withdrawn before January 1, 2013 in the exchange area.[9]

A different withdrawal date applies to a Group Two ILEC exchange area. The bill sets January 1, 2014, as the date before which BLES may not be withdrawn from the exchange area.[10]

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[6] R.C. 4927.07(A)(2)(b)(ii) and 4927.12(C)(3)(a).

[7] R.C. 4927.01(A)(5) (not in the bill).

[8] R.C. 4927.01(A)(14) (not in the bill).

[9] R.C. 4927.07(A)(2)(b)(i) and (C)(2).

[10] R.C. 4927.07(A)(2)(b)(ii) and (C)(2).

Exemption from BLES service quality standards

The bill specifies that on the applicable BLES withdrawal dates provisions of current law and rules pertaining to service quality standards for BLES, which include such standards as time periods for service installation, outage repair deadlines, and payment due dates, do not apply to a fully competitive ILEC. The bill also provides that those service quality standards do not apply to any other telephone company, to the extent that the telephone company provides BLES in the same exchange area as the fully competitive ILEC. The bill also specifies that, on these applicable dates, the law and rules outlining the obligations of an ILEC to provide BLES to all persons and entities on a reasonable and nondiscriminatory basis does not apply to a fully competitive ILEC. [11]

Presumably, since the bill does not *require* fully competitive ILECs to withdraw BLES on the applicable BLES withdrawal dates, the current laws and rules discussed above will continue to apply to fully competitive ILECs in those exchange areas unless and until BLES is withdrawn.

Retirement of regulated telecommunications service

The bill permits a fully competitive ILEC to retire its regulated telecommunications service in the state, including BLES, on or after January 1, 2014, if the ILEC gives 90 days' prior notice to the PUCO, to its wholesale and retail customers, and to any telephone company wholesale provider of its services.[12]

Regarding a telephone company's telecommunications service in the state, the bill permits the company to *retire the company's regulated* telecommunications service instead of *abandon entirely* telecommunication service if the company gives at least 30 days' prior notice to its wholesale and retail customers, and to any telephone company wholesale provider of its services.

Applicability of bill

The bill expressly states that its provisions addressing BLES withdrawal and retirement of regulated telecommunications service in the state do not apply to any of the following:

- BLES provided by an ILEC that is *not* fully competitive;

[11] R.C. 4927.08, 4927.10, and 4927.11.

[12] R.C. 4927.07(E).

- Pole attachments and conduit occupancy and the requirement that a telephone company may not:
  - withdraw any tariffs for these without PUCO approval, or
  - *retire* (under current law, *abandon*) pole attachment and conduit occupancy service provided under current pole attachment and conduit occupancy law; and
- Interconnection and resale agreements approved under the Telecommunications Act of 1996.[13]

Provision of comparable service

Not later than one year after the effective date of the bill, the PUCO must adopt a rule that addresses situations in which a fully competitive ILEC withdraws BLES or retires its regulated telecommunications service, including BLES, and no other comparable service is available in the affected exchange area. The bill permits the PUCO to establish a "competitively neutral and technologically neutral" process by which service comparable to the withdrawn or retired service may be provided by a single entity in each affected exchange area. The PUCO may adopt a funding mechanism to facilitate the process and service, which mechanism, as with the process and service, must be competitively and technologically neutral under the bill.[14] Neither the bill nor existing law defines the term "competitively neutral and technologically neutral."

Rates for BLES

The bill leaves unchanged the annual $1.25 rate increase limitation under a former PUCO rule referred to in current law.[15] However, the bill adds a new specification that the rate increase limitation be applied separately to business and residential classes of service. The bill specifies further that an ILEC may alter rates upward for BLES multiple times in the same exchange area during a single 12-month period, as long as the total amount of the upward alterations does not exceed the limitation described in the BLES law, which is $1.25 under the PUCO rule cited in the bill.[16]

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[13] R.C. 4905.71 (not in the bill) and 4927.07(F).

[14] R.C. 4927.071.

[15] R.C. 4927.12(C)(1), (2), and (3).

[16] R.C. 4927.12 and O.A.C. 4901:1-4-11 (as it existed on September 13, 2010).

Withdrawal and retirement notification

Notice that a fully competitive ILEC's withdrawing BLES or retiring its regulated telecommunications service in the state, including BLES, may be provided in any reasonable manner, including by bill insert, bill message, direct mail, or, if the customer consents, by electronic means. No notice is required if reasonably comparable notice is required by federal law or rule and the notice is given in accordance with that law or rule.

The bill provides that, in the case of BLES withdrawal for a fully competitive ILEC, the required notice to the PUCO or to affected customers may be provided before the earliest permitted withdrawal dates, January 1, 2013 or January 1, 2014 ("**Dates of BLES withdrawal**," described above), so that the BLES withdrawal may take effect on those dates. Similarly, in the case of retirement of services by a fully competitive ILEC, notice may be provided before January 1, 2014, to the PUCO, to the ILEC's wholesale and retail customers, and to any telephone company wholesale provider of its services so that the retirement of service may take effect on that date.[17]

PUCO rules

The bill requires that not later than 120 days after the bill's effective date, the PUCO must amend its rules to the extent necessary to conform to the provisions of the bill.[18]

HISTORY

ACTION	DATE
Introduced	12-15-11

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[17] R.C. 4927.07(C)(1) and (E).

[18] Section 3.