



Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 271*

129th General Assembly

(As Reported by S. Energy & Public Utilities)

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."
- Requires at least 90 days' prior notice of the withdrawal to be given to the Public Utilities Commission (PUCO), the Consumers' Counsel affected customers, and the public.
- 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 ILEC exchanges):
 - For a Group One ILEC exchange, 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 exchange, 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.

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

- Sets July 1, 2013, for Group One ILEC exchange areas, and July 1, 2014, for Group Two ILEC exchange areas, as the dates before which BLES may not be withdrawn.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.
- Excludes from the provisions of the bill ILECs that are *not* fully competitive.
- Requires the PUCO to establish a "competitively and technologically neutral" process by which service may be provided in the event that a fully competitive ILEC provides notice of BLES withdrawal and no service comparable to BLES is available to one or more customer locations in the exchange area.
- Requires the PUCO to rely on the National Broadband Plan and Connect America Fund adopted by the Federal Communications Commission in making comparable service availability and funding determinations.
- 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.
- Permits notice of BLES withdrawal to affected customers to be provided in a reasonable manner including by bill insert or message, direct mail, or electronic means, if the customer consents.
- Permits notice to the PUCO and affected customers to be provided before the specified BLES withdrawal dates so that withdrawal 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.
- Specifies that the bill is not intended to affect any contractual obligation or any right or obligation under federal law or rules.

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 area¹ if that ILEC gives at least 90 days' prior notice to the Public Utilities Commission (PUCO), the Consumers' Counsel, its affected customers, and the public in accordance with a rule adopted by the PUCO that is consistent with public notice requirements under current utility ratemaking law.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 each of an ILEC's exchange areas (referred to in this analysis as Group One ILEC exchange or Group Two ILEC exchange):

- The ILEC's specific exchange area was determined by the PUCO to meet one of a number of competitive market tests and to qualify for alternative

¹ R.C. 4927.07(A) and 4927.12(A).

² R.C. 4927.07(C) and 4909.19 (not in the bill).

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

⁴ O.A.C. 4901:1-6-01.

regulation of BLES under PUCO rules as they existed on September 13, 2010 (Group One ILEC exchange);⁵ or

- If the ILEC's specific 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 exchange).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 ILEC with a Group One ILEC exchange may withdraw BLES from that exchange area. BLES may not be withdrawn before July 1, 2013 in the exchange area.⁹

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

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).

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

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 whether or not BLES is actually withdrawn as of the applicable withdrawal date. 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 whether or not BLES is actually withdrawn as of the applicable withdrawal date.¹¹

Applicability of bill

The bill expressly states that its provisions addressing BLES withdrawal do not apply to an ILEC that is *not* fully competitive.

Provision of comparable service

Not later than 120 days after the effective date of the bill, the PUCO may adopt a rule that addresses situations in which a fully competitive ILEC provides notice of BLES withdrawal and no other comparable service is available at one or more customer locations in the affected exchange area. The bill requires the PUCO to establish a "competitively and technologically neutral" process by which such service may be provided to those customer locations. The bill also requires the Commission to rely on the National Broadband Plan and the Connect America Fund adopted by the Federal Communications Commission in determining the availability and funding of comparable service.¹² The PUCO shall not adopt a funding mechanism for the process or service under the bill and shall not order any carrier to provide such service

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

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

¹² Available at: www.broadband.gov.

involuntarily to those customer locations.¹³ Neither the bill nor existing law defines the term "competitively 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.¹⁴ 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.¹⁵

BLES withdrawal notification

Notice to customers of a fully competitive ILEC's withdrawal of BLES may be provided in any reasonable manner, including by bill insert, bill message, direct mail, or, if the customer consents, by electronic means.

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.

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.¹⁶

Legislative intent

The bill specifies that its provisions are not intended to affect any contractual obligation or any right or obligation under federal law or rules.¹⁷

¹³ R.C. 4927.071.

¹⁴ R.C. 4927.12(C)(1), (2), and (3).

¹⁵ R.C. 4927.12 and O.A.C. 4901:1-4-11 (as it existed on September 13, 2010).

¹⁶ Section 3.

HISTORY

ACTION

DATE

Introduced
Reported, S. Energy & Public Utilities

12-15-11
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¹⁷ Section 4.

