



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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(As Passed By the General Assembly)

Reps. Hill, R. Smith, Lang, Seitz, Becker, Celebrezze, Scherer, Rezabek, Riedel, Koehler, Manning, Kick, Reineke, Blessing, Romanchuk

Sens. Beagle, Burke, Coley, Eklund, Hackett, Hoagland, Hottinger, Huffman, Lehner, Terhar

Effective date: March 20, 2019

ACT SUMMARY

Telecommunications services changes

- Allows most incumbent local exchange carriers (ILECs) to increase rates for basic local exchange service (BLES) by up to \$2 each year, except:
 - Rates may be increased as needed to meet federal eligibility requirements for the Universal Service High-Cost program; and
 - The ILECs may apply to the Public Utilities Commission (PUCO) no earlier than March 20, 2023, for an exemption from regulation of BLES rates in an exchange area.
- Requires an application for an exemption from BLES rate regulation to be deemed approved after 30 days unless PUCO finds that the ILEC has not demonstrated both of the following:
 - The exchange area is competitive, based on tests in continuing law;
 - The ILEC has experienced at least 50% line loss in the exchange area since January 1, 2002.
- Modifies the timeline for applications under continuing law for competitiveness determinations of exchange areas by permitting PUCO to suspend an application's automatic approval for good cause shown.
- Prohibits most ILECs from decreasing their BLES rates below the "incremental cost."

- Requires PUCO staff to produce and docket a report not later than March 20, 2022, on all of the following:
 - The number of basic local exchange lines in service in Ohio at the time of the report;
 - The aggregate amount of line loss in Ohio since March 20, 2019;
 - The change in the price of BLES in each exchange area in Ohio over the three years since March 20, 2019.
- Requires PUCO to submit to the Speaker of the House, the President of the Senate, and the appropriate House and Senate committees a report of its assessment of the staff's report, following a three-month comment period on the staff's report.
- Requires a telephone company to provide 15 days' advance notice to customers of material changes in the rates, terms, and conditions of only the following services:
 - Retail services required to be tariffed by PUCO or the Federal Communications Commission (FCC);
 - Wholesale services as to which there is no other applicable notice requirement.
- Revises state policy for the provision of telecommunications services.

PUCO authority and jurisdiction

- Repeals the PUCO-approval requirement for an acquisition or merger of a domestic telephone company if there is a pending application with the FCC and the FCC exercises its authority regarding the application.
- Requires a domestic telephone company or a holding company controlling a domestic telephone company to notify PUCO of a merger or transfer-of-control application filed with the FCC.
- Allows PUCO to investigate or inspect any telephone-company plant and facility, to the extent of PUCO's jurisdiction and only in response to a complaint that implicates the plant or facility and that is made by a consumer concerning BLES or another entity concerning wholesale service.
- Requires PUCO to amend its rules, not later than July 18, 2019, to bring them into conformity with the act and to amend its rules governing Lifeline service to ensure consistency with the federal Lifeline program.



Exemption from treble damages

- Excludes telephone companies from treble damages liability resulting from a violation of or failure to comply with the Public Utilities Law or PUCO orders.

Emergency telephone system

- Modifies, for purposes of the Emergency Telephone System Law, the definitions of "telephone company" and "enhanced wireline 9-1-1" to expand 9-1-1 providers covered under the law.
- Expands the entities that are not liable for civil-action damages in connection with certain aspects of a 9-1-1 system or the provision of assistance to a public utility, municipal utility, or state or local government in cases of public emergency.

Contractual and federal obligations

- States that nothing in the sections amended or enacted by the act is to be construed to affect any existing contractual obligation or any right or obligation under federal law or rules.

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CONTENT AND OPERATION

Overview

The act further deregulates certain aspects of telecommunications services, a process that began with the 2010 enactment of S.B. 162 of the 128th General Assembly, with changes to telecommunications service law, especially regarding the provision of basic local exchange service (BLES) and the Public Utilities Commission's (PUCO's) authority and jurisdiction over certain telecommunications activities. Additionally, the act expands the law governing the 9-1-1 system to include providers that were not previously covered by it.

Telecommunications services changes

BLES rate increases

Annual rate increase

The act modifies the amount by which most incumbent local exchange carriers (ILECs) may increase rates for BLES.¹ An ILEC that is customer-owned-and-operated may, under continuing law, generally alter its BLES rates by any amount at any time.² This analysis will refer to all other ILECs as "investor-owned."

The act allows an investor-owned ILEC to increase its monthly BLES rate once in a 12-month period, by up to \$2.00. Prior law restricted such an ILEC's BLES rate increase to \$1.25.³ The effect is that a customer might pay up to 75¢ more per month. Continuing law requires that an investor-owned ILEC must either receive a competitiveness determination from PUCO or have increased its BLES rates in the 12 months prior to September 13, 2010, before the ILEC may take the annual BLES rate increase in an exchange area.⁴

According to PUCO, there are 43 (out of 46) ILECs, whose exchange areas in the state qualify for an ILEC to take the annual BLES rate increase. The exchanges that do not yet qualify are the exchanges in the three red areas on the map below.

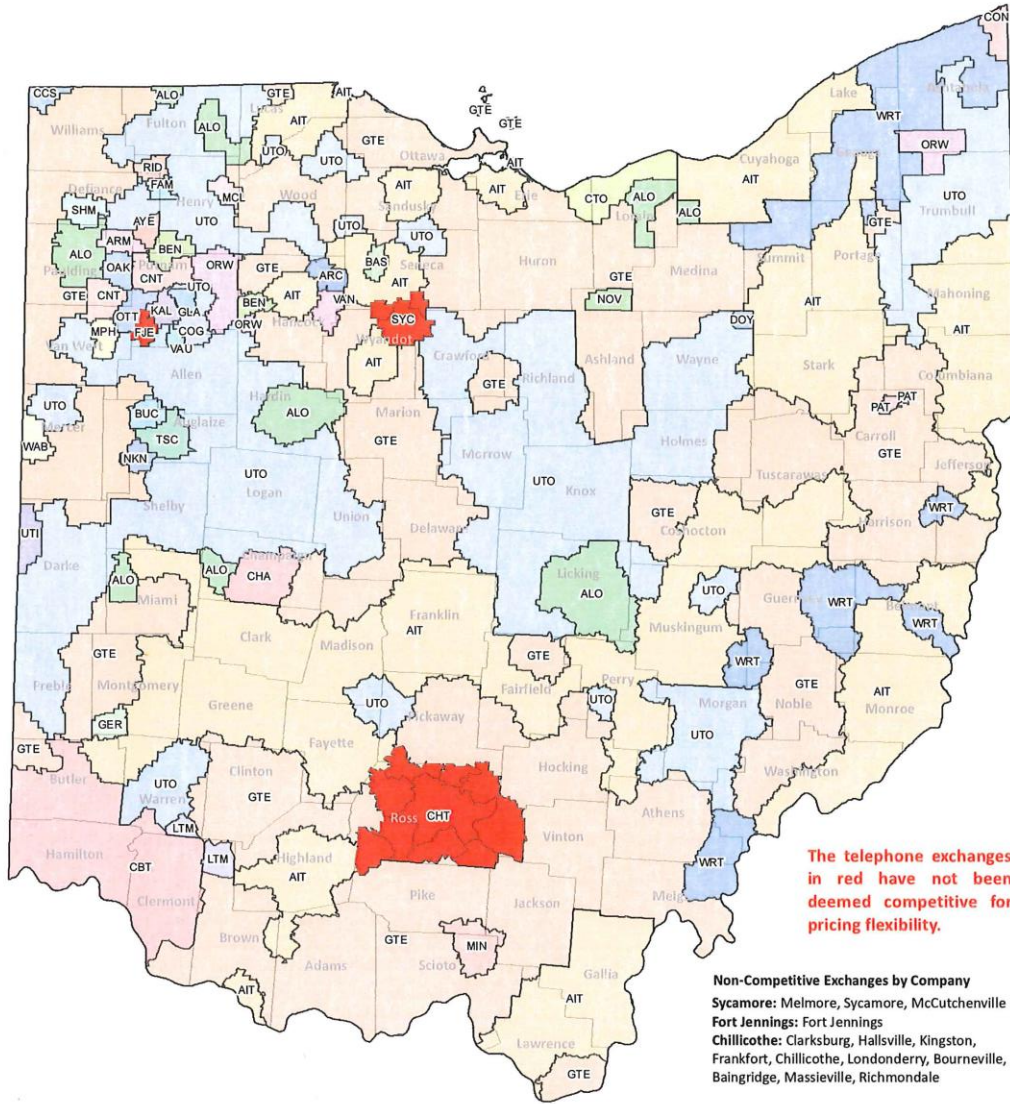
¹ R.C. 4927.12(A) and (B).

² R.C. 4927.12(E) in prior law; recodified as R.C. 4927.121 under the act.

³ R.C. 4927.12(B)(1), (2), and (3) and Ohio Administrative Code (O.A.C.) 4901:1-4-11, as that rule existed on September 13, 2010.

⁴ R.C. 4927.12(B)(1), (2), and (3).





Non-Competitive Exchanges	(BUC) Buckland	(CTO) CenturyTel dba CenturyLink	(LTM) Little Miami	(OTT) Ottoville Mutual	(VAN) Vanire
(AIT) AT&T Ohio	(CBT) Cincinnati Bell	(DOY) Doylestown	(MCL) McClure	(PAT) Pattersenville	(VAU) Vaughnsville
(ALO) Windstream Ohio	(CCS) Frontier	(FAM) Farmers Mutual	(MIN) Minford	(RID) Ridgeville	(WAB) Wabash Mutual
(ARC) Arcadia	(CHA) Champaign	(FJE) Fort Jennings	(MPH) Middle Point Home	(SHM) Shenwood Mutual	(WRT) Windstream Western Reserve
(ARM) Arthur Mutual	(CHT) Chillicothe	(GER) Germantown	(NKN) New Knoxville	(SYC) Sycamore	
(AYE) Aysersville	(CNT) Continental	(GLA) Glandorf	(NOV) Nova	(TSC) Telephone Service Co	
(BAS) Bascom Mutual	(COG) Columbus Grove	(GTE) Frontier North	(GAK) Oakwood	(UTI) United of Indiana	
(BEN) Benton Ridge	(CON) Conneaut	(KAL) Kalida	(ORW) Orwell	(UTO) UTO dba CenturyLink	

*Note that when the map refers to "pricing flexibility," this is a reference to annual BLES rate increases allowed under continuing law. It is not the same as the exemption from BLES rate regulation allowed under the act.



Rate increases to comply with federal requirements

Under the act, PUCO must allow an investor-owned ILEC to increase its BLES rates by any amount necessary to comply with the Federal Communications Commission's (FCC's) eligibility requirements for the federal Universal Service High-Cost program. This applies to every exchange area—even the ones in the three red areas in the map above. The act allows PUCO to order these rate increases to be phased-in over a period not to exceed three years if PUCO determines the phase-in is necessary to protect the public interest.⁵ The ILEC must provide 30 days' notice to PUCO and affected customers before any rate change.⁶

Exemption from rate regulation

The act also allows an investor-owned ILEC, not earlier than March 20, 2023, to apply to PUCO for an exemption from rate regulation for BLES in an exchange area. PUCO must approve an application that demonstrates both:

- The exchange area is competitive, either because it was determined to be competitive before the act took effect, or because the ILEC has demonstrated competitiveness in the exchange area under the test in continuing law for annual BLES rate increases (that two or more alternative providers offer, in the exchange area, competing service to the ILEC's BLES⁷); and
- The ILEC has experienced at least 50% line loss in the exchange area since January 1, 2002.

The act defines "line loss" as the number of access lines, whether residential or commercial, for which an ILEC customer has terminated local exchange service. The term "local exchange service" is not defined in the act or continuing law. The term "access line" is also undefined.

For the exchanges in the three red areas on the map above, the ILEC must demonstrate *both* that two or more alternative providers offer competing service in the exchange area *and* that the ILEC has experienced 50% line loss since 2002. For the exchange areas for the other 43 ILECs, the ILECs would need to demonstrate *only* 50% line loss since 2002.

⁵ R.C. 4927.122.

⁶ R.C. 4927.124(A).

⁷ R.C. 4927.12(B)(3).



An application for an exemption is deemed approved on the 31st day after filing, unless PUCO issues an order before then that the requirements have not been met.⁸

Once an application is approved or deemed approved, the ILEC is exempt from any regulation of BLES rates in the exchange area that was the subject of the application. Except that the ILEC may not lower its BLES rates below the "incremental cost," which is to be defined by PUCO. Also, the ILEC must provide 30 days' notice to PUCO and affected customers before any BLES rate change, even if the ILEC was granted the exemption.⁹

The act states that it must not be construed to impair the rights of any person to file a complaint with PUCO under continuing law for unjust or unlawful rates, or the rights of PUCO to initiate such a complaint, against an ILEC that has been granted an exemption under the act.¹⁰

Timeline for applications for competitiveness determinations

The act modifies the timeline for applications under continuing law for competitiveness determinations.¹¹ Before explaining the act's specific changes, it is important to note that the changes have a limited scope. The changes apply only to the exchanges in the three red areas on the map above. That is because the other exchange areas have already been determined competitive, so the ILECs in those other exchange areas will never need to apply for competitiveness determinations.¹²

Under continuing law, an application for a competitiveness determination is deemed approved unless PUCO issues an order within 30 days after the application was filed finding that the ILEC has not met the requirements for competitiveness. But, under the act, PUCO may, within that 30-day period, suspend the automatic approval for good cause shown. PUCO would then have 90 days after the date of the suspension to approve or deny the application. The act does not specify what happens if PUCO fails to approve or deny the application by the 90-day deadline.

The act also clarifies that if the application is deemed approved, it is deemed approved on the 31st day after the filing of the application.¹³

⁸ R.C. 4927.123.

⁹ R.C. 4927.12(A), 4927.123(E), and 4927.124.

¹⁰ R.C. 4927.123(F); R.C. 4927.21, not in the act.

¹¹ R.C. 4927.12(B)(3)(b) and (c).

¹² R.C. 4927.123(C)(2)(c).

¹³ R.C. 4927.12(B)(3)(b); conforming changes in R.C. 4927.12(B)(3)(c).



Again, these timeline changes apply only to the exchange areas of three ILECs in the state. By contrast, the applications for exemptions from BLES rate regulation, which could be filed for *any* exchange area in the state, are deemed approved on the 31st day after filing.

BLES rate decreases

The act prohibits an investor-owned ILEC from decreasing its BLES rate below the ILEC's incremental cost. The act defers to PUCO to define "incremental cost."¹⁴ Prior law imposed limitations on "upward" alterations for BLES, but not on downward alterations.¹⁵

PUCO report

The act requires PUCO staff to produce and docket a report, not later than March 20, 2022, that includes all of the following:

- The number of basic local exchange lines in service in Ohio at the time of the report;
- The aggregate amount of line loss (see definition above) in Ohio since March 20, 2019;
- The change in the price of BLES in each exchange area in Ohio over the three years since March 20, 2019.

PUCO must then allow three months for public comment on the report.

Not later than a date that is exactly three months after the reported is docketed, PUCO must submit a report to the President of the Senate, the Speaker of the House, and the appropriate standing committees of the Senate and House. The report must include PUCO's assessment of the staff's report.

The act specifies that it does not prevent a party from arguing that information subject to being reported is a trade secret and should be kept confidential.¹⁶

Notice of material changes in rates, terms, and conditions

The act narrows the scope of a provision requiring a telephone company to provide at least 15 days' advance notice to its affected customers of material changes in

¹⁴ R.C. 4927.12(A) and (B)(1), (2), and (3)(a) and 4927.123(B).

¹⁵ Prior R.C. 4927.12(B), (C), and (D).

¹⁶ Section 4.



rates, terms, and conditions. Prior law required this notice to be provided for material changes in the rates, terms, and conditions of any service. The act requires this notice to be provided for material changes in the rates, terms, and conditions of "any retail service required to be tariffed by [PUCO] or [FCC or] any wholesale service as to which there is no other applicable notice requirement."¹⁷ Under PUCO rules, the following retail telecommunications services are required to be tariffed: 9-1-1 service provided in Ohio, BLES (including BLES installation and reconnection fees and Lifeline service rates or discounts), carrier access, N-1-1 service, pole attachments and conduit occupancy, pay telephone access lines, toll presubscriptions, excess construction charges, inmate operator services, and telecommunications relay service.¹⁸

State policy

The act adds the policy objective to allow and encourage competition and market forces to determine the availability, prices, terms, and other conditions of providing telecommunications services.

The act also changes the policy objective of ensuring the "availability of adequate [BLES] or voice service to citizens throughout the state" to ensuring the "adequacy and reliability of [BLES] consistent with [continuing law], and the adequacy and reliability of voice service throughout the state."¹⁹ Continuing law generally requires ILECs to provide BLES to all persons or entities in its service area requesting BLES, unless the FCC authorizes the withdrawal of BLES.²⁰

PUCO authority and jurisdiction

Jurisdiction over telephone company acquisitions or mergers

Domestic telephone or holding company acquisitions or mergers

The act removes the requirement for PUCO approval of both of the following, if there is a pending application for the same thing with the FCC:

- Acquiring control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company;
- The merger of a domestic telephone company with another domestic telephone company.

¹⁷ R.C. 4927.17(A).

¹⁸ O.A.C. 4901:1-6-11(A)(1).

¹⁹ R.C. 4927.02(A)(1) and (11).

²⁰ R.C. 4927.07(D), 4927.10, and 4927.11, not in the act.



But, if the FCC waives the exercise of its authority regarding the acquisition or merger, or otherwise chooses not to exercise its authority regarding the acquisition or merger, then PUCO approval is still required.²¹

Notice of FCC application for merger or transfer of control

The act requires a domestic telephone company or a holding company controlling a domestic telephone company that files an application with the FCC seeking authority for a merger or "transfer of control" to file notice of the application with PUCO. The notice must include an Internet link to the application.²² PUCO must adopt rules to specify the time and manner in which the company must file the notice.²³

Investigations of telephone companies

The act permits PUCO to investigate or inspect the plant and facility of any telephone company, subject to the following limitations:

- To the extent of PUCO's jurisdiction over the company under state law governing telecommunications;
- Only in response to a complaint that implicates the plant or facility and that is made by a consumer concerning BLES or another entity concerning wholesale service.²⁴

Under continuing law, PUCO may: (1) examine the books, records, contracts, documents, and papers of a telephone company for any purpose incidental to PUCO's authority, (2) compel the production of the books, records, contracts, documents, and papers, and (3) compel the attendance of witnesses to give evidence.²⁵

Rulemaking

The act requires PUCO to amend its rules, not later than July 18, 2019, to the extent necessary to bring them into conformity with the act. The act also requires PUCO to amend its rules governing Lifeline service to ensure consistency with the federal Lifeline program.²⁶

²¹ R.C. 4905.402(B), (C), and (H).

²² R.C. 4927.402(G).

²³ R.C. 4905.402(D).

²⁴ R.C. 4927.19(B).

²⁵ R.C. 4927.19(A).

²⁶ Section 3; R.C. 4927.13, not in the act.



Exclusion from treble damages

The act exempts telephone companies from the requirement that any public utility or railroad that does, or causes to be done, any act or thing prohibited by certain chapters of the Public Utilities Law,²⁷ or declared to be unlawful, or omits to do any act or thing required by that law, or by order of PUCO, is liable to the person, firm, or corporation injured for treble damages.²⁸

Emergency telephone system

Expanding state law to cover providers of 9-1-1 capabilities

The act expands, for the purposes of the Emergency Telephone System Law, the definitions of "telephone company" and "enhanced wireline 9-1-1." These changes have the effect of including entities, not covered under prior law, that provide 9-1-1 capabilities.

Under the act, "telephone company" includes any covered 9-1-1 service provider as defined under federal law.²⁹ Under federal law, "covered 9-1-1 service provider" means any entity that provides 9-1-1, Enhanced 9-1-1, or Next Generation 9-1-1 capabilities such as call routing, automatic location information, automatic number identification, or the functional equivalent of those capabilities, directly to a public safety answering point (PSAP), statewide default answering point, or appropriate local emergency authority, or operates one or more central offices that directly serve a PSAP. "Covered 9-1-1 service provider" excludes any entity that constitutes a PSAP or governmental authority to the extent that it provides 9-1-1 capabilities, or offers the capability to originate 9-1-1 calls where another service provider delivers those calls and associated number or location information to the appropriate PSAP.³⁰

The act expands the definition of "enhanced wireline 9-1-1" to include a 9-1-1 system in which the wireline telephone network, in providing wireline 9-1-1, receives, develops, collects, or processes requests for emergency assistance and relays, transfers, operates, maintains, or provides emergency notification services or system capabilities. Under prior law, "enhanced wireline 9-1-1" meant only a 9-1-1 system in which the wireline telephone network, in providing 9-1-1, automatically routed the call to emergency service providers that served the location from which the call was made and

²⁷ Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code.

²⁸ R.C. 4905.61.

²⁹ R.C. 128.01(W).

³⁰ 47 C.F.R. 12.4(a)(4).



immediately provided to personnel answering the 9-1-1 call information on the location and the telephone number from which the call was being made.³¹

Civil action immunity expansion

The act expands an immunity provision in the Emergency Telephone System Law. Specifically, the act excludes from liability, for damages in a civil action for injuries, death, or loss to persons or property from (1) activities or omissions in connection with the development, maintenance, or operation of a 9-1-1 system or (2) assisting a public utility, municipal utility, or state or local government in cases of public emergency, both of the following:

- Telephone companies and other installers, maintainers, and providers of services used for or with a 9-1-1 system and their respective officers, directors, employees, agents, suppliers, corporate parents, and affiliates; and
- Corporate parents and affiliates of telephone companies and other installers, maintainers, and providers of telecommunications equipment used on the premises of a PSAP.

Prior law granted immunity to telephone companies and other installers, maintainers, and providers of telecommunications equipment used on the premises of a PSAP and their respective officers, directors, employees, agents, and suppliers. Under continuing law, immunity does not apply in cases of willful or wanton misconduct.³²

Contractual and federal obligations

The act states that nothing in the sections amended or enacted by the act is to be construed to affect any existing contractual obligation or any right or obligation under federal law or rules.³³

³¹ R.C. 128.01(D).

³² R.C. 128.01(Q) and 128.32(C).

³³ R.C. 4905.402(I) and 4927.101(C) .



HISTORY

ACTION	DATE
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Reported, S. Public Utilities	12-06-18
Passed Senate (23-8)	12-13-18
House concurred in Senate amendments (65-21)	12-13-18

