



Ohio Revised Code

Section 4905.402 Acquiring or merging with domestic telephone or electric utility company or holding company.

Effective: March 20, 2019

Legislation: House Bill 402

(A) As used in this section:

(1) "Control" means the possession of the power to direct the management and policies of a domestic telephone company or a holding company of a domestic telephone company, or the management and policies of a domestic electric utility or a holding company of a domestic electric utility through the ownership of voting securities, by contract, or otherwise, but does not include the power that results from holding an official position or the possession of corporate office with the domestic company or utility or the holding company. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds with the power to vote proxies that constitute, twenty per cent or more of the total voting power of the domestic company or utility or the holding company.

(2) "Electric utility" has the same meaning as in section 4928.07 of the Revised Code.

(3) "Holding company" excludes any securities broker performing the usual and customary broker's function.

(4) "Telephone company" means any company described in division (A) of section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code and provides basic local exchange service, as defined in section 4927.01 of the Revised Code.

(B) Except as provided in division (H)(1) of this section:

(1) No person shall acquire control, directly or indirectly, of a domestic telephone company or a holding company controlling a domestic telephone company or of a domestic electric utility or a holding company controlling a domestic electric utility unless that person obtains the prior approval of the public utilities commission under this section.



(2) To obtain approval required under division (B)(1) of this section, the person seeking the approval shall file an application with the public utilities commission demonstrating that the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge. The application shall contain such information as the public utilities commission may require. If the public utilities commission considers a hearing necessary, it may fix a time and place for hearing. If, after review of the application and after any necessary hearing, the public utilities commission is satisfied that approval of the application will promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge, the public utilities commission shall approve the application and make such order as it considers proper. If the public utilities commission fails to issue an order within thirty days of the filing of the application under this division, or within twenty days of the conclusion of a hearing, if one is held, the application shall be deemed approved by operation of law.

(C) Except as provided in division (H)(2) of this section:

(1) No domestic telephone company shall merge with another domestic telephone company unless the merging companies obtain the prior approval of the public utilities commission.

(2) An application seeking approval required under division (C)(1) of this section shall be filed, processed, and decided in the manner provided for an application under division (B)(2) of this section.

(D) The public utilities commission shall adopt such rules as it finds necessary to carry out the provisions of this section. The rules shall specify the time and manner in which a company must file the notice required under division (G) of this section.

(E) If it appears to the public utilities commission or to any person that may be adversely affected that any person is engaged in or about to engage in any acts or practices that would violate division (B) or (C) of this section or any provision of a rule adopted under this section, the attorney general, when directed to do so by the public utilities commission, or the person claiming to be adversely affected may bring an action in any court of common pleas that has jurisdiction and venue to enjoin such acts or practices and enforce compliance. Upon a proper showing, the court shall grant, without



bond, a restraining order or temporary or permanent injunction.

(F) The courts of this state have jurisdiction over every person not a resident of or domiciled or authorized to do business in this state that files, or is prohibited from acting without first filing, an application under division (B) or (C) of this section, and over all actions involving such person arising out of violations of any provision of this section or of a rule adopted under this section. The secretary of state shall be the agent for service of process for any such person in any action, suit, or proceeding arising out of such violations. Copies of all such lawful process shall be served upon the secretary of state and transmitted by certified mail, with return receipt requested, by the secretary of state to such person at the person's last known address.

(G) A domestic telephone company or a holding company controlling a domestic telephone company that files an application with the federal communications commission seeking authority for a merger or transfer of control shall file notice of the application with the public utilities commission. The notice shall include an internet link to the application.

(H)(1) Divisions (B)(1) and (2) of this section do not apply to the acquisition of control of a domestic telephone company or a holding company controlling a domestic telephone company if there is a pending application with the federal communications commission regarding the acquisition. If the federal communications commission waives the exercise of its authority regarding the acquisition or otherwise chooses not to exercise its authority regarding the acquisition, then divisions (B)(1) and (2) of this section apply.

(2) Divisions (C)(1) and (2) of this section do not apply if there is a pending application with the federal communications commission regarding a merger of domestic telephone companies. If the federal communications commission waives the exercise of its authority regarding the merger or otherwise chooses not to exercise its authority regarding the merger, then divisions (C)(1) and (2) of this section apply.

(I) Nothing in division (G) or (H) of this section shall affect the obligations and rights described in division (A) of section 4927.101 of the Revised Code.