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January 5, 2007

Ms. Renee Jenkins
Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43266

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PUCO

RE: In the Matter of the Establishment of Carrier-to-Carrier Rules, Case No. 06-1344-TP-ORD

Dear Ms. Jenkins:

Enclosed are an original and 10 copies of the Initial Comments of Cincinnati Bell Telephone Company LLC to be filed in connection with the above referenced proceeding. An additional copy is also enclosed. Please date stamp the additional copy to acknowledge receipt and return it to me. Questions regarding this filing may be directed to me at the above address or by telephone at (513) 397-6671.

Sincerely,

Patricia L. Rupich

Patricia L. Rupich

Attachments

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of Carrier-to-Carrier Rules.	))	Case No. 06-1344-TP-ORD
In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines.	)))	Case No. 99-998-TP-COI
In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code.	))))	Case No. 99-563-TP-COI

INITIAL COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC

In accordance with the Commission's Entry in this matter of November 21, 2006, Cincinnati Bell Telephone Company LLC ("CBT") hereby submits its Initial Comments concerning the Staff's proposed revisions to the carrier-to-carrier rules (the "Staff Proposal").

General Comments Regarding References to Federal Law

Many of the rules contained in the Staff Proposal refer to various federal statutes and regulations, primarily sections of the Telecommunications Act of 1996 and FCC regulations implementing those provisions. The Staff Proposal repeatedly incorporates only the version of those statutes and regulations "as effective November 1, 2006." CBT does not believe it is necessary to cite to and/or adopt such federal statutes and regulations because they already apply of their own force without the Commission doing anything. Even if the Commission feels it is necessary to adopt the same substantive rules as state law, it would be a mistake to adopt the federal statutes and rules only as they existed at a fixed point in time. As the Commission is well aware, in the ten years

since passage of the 1996 Act, the FCC has promulgated numerous rules, many of which have been overturned and/or vacated by court proceedings. The FCC has removed, replaced and/or revised many of its rules implementing the 1996 Act and there are still ongoing proceedings that are addressing some of these rules. In addition, the triennial review process requires the FCC to reconsider many of its rules on a periodic basis, making it likely that there will be additional future changes to the federal rules. To adopt a past version of a particular rule as state law will almost inevitably create a future situation where the federal rule and the state rule will impose different requirements. In most cases, principles of federal preemption will likely cause the current version of the federal rule to trump a conflicting state rule. However, in situations where a federal rule may not completely preempt state rules, having two different rules in effect will cause confusion and make the regulatory landscape more uncertain, not more clear. CBT would urge the Commission not to adopt state rules that simply incorporate federal rules, as such rules would be superfluous. To the extent the Commission does adopt federal rules, it should not limit them to the rule as effective at a fixed point in time.

Even where the Commission's proposed rules do not explicitly cite a parallel federal provision, in many cases the substance of a rule is identical or nearly identical to a federal rule. This practice also carries the same risk that a future change in the federal rule will create a conflict between the federal and state rules on the same subject. Where there is no need for a parallel state definition of the same term that is already defined in federal law, it would be better to cite to the federal definition than to restate it verbatim.

4901:1-7-01 Definitions

Subsection (N) defines "number portability" by reference to a change in location as opposed to a change in carrier. The FCC defines "number portability" as the ability to retain a telephone number *at the same location* when switching from one carrier to another. 47 C.F.R. § 52.21(l). The ability to keep a telephone number at a new location is known as "location portability." 47 C.F.R. § 52.21(j). The FCC has declined to require location portability. CBT does not believe that the Commission intended to inadvertently implement location portability merely by defining the term "number portability" in these rules. To retain conformity with federal law on number portability and the manner in which number portability actually has been implemented, the definition should be removed from the rules or, if it is retained, should be changed to "when *switching* from one *telecommunications carrier* to another."

4901:1-7-07 Establishment of Interconnection Agreements

This rule modifies the timelines for negotiation of interconnection agreements for no obvious reason. All industry participants (ILECs and CLECs) appear content with the current process, so no change is necessary. The revised rule would also require negotiating parties to include the chief of the telecommunications division in their various communications, beginning with the initial request to negotiate. CBT is unaware of any problems that have arisen on account of telephone companies not complying with their obligations to follow the negotiation process that would necessitate involving the Commission from the beginning of every negotiation. If problems arise in a given case, there are appropriate channels for involving the Commission, so it is unnecessary to build this into the process for each and every private negotiation.

Proposed rule 4901:1-7-07(D)(2) creates a new requirement of an affidavit from the parties to a negotiated interconnection agreement that the agreement complies with 47 U.S.C. § 252(e)(2)(a). Heretofore, the parties have made such representations in their application for the Commission to approve the agreement. Most interconnection agreements are approved automatically and require no review. CBT is not aware of problems that have arisen with interconnection agreements not complying with § 252 and does not believe this new affidavit requirement is necessary.

4901:1-7-09 Arbitration of 47 U.S.C. 252 Interconnection Agreements

The Commission has long delegated the task of arbitrating the unresolved issues in interconnection agreements to an assigned arbitration panel. The panel issues an arbitration report in which it proposes a resolution of each issue raised in the arbitration. Heretofore, the Commission has traditionally afforded the parties an opportunity to raise objections to the panel's report prior to the Commission's issuance of a final arbitration award. In proposed rule 4901:1-7-09, there is no explicit step between the decision of the panel on unresolved issues (part (4)(j)) and the Commission's resolution of the issues (part (4)(k), (l)). CBT would suggest that the rules formalize the parties' opportunity to file objections to the panel report prior to the Commission's arbitration award. This would provide the parties an opportunity to clarify issues in the panel report and allow the Commission to correct them before the issuance of the final arbitration award. This could avoid the need for rehearing on those same matters after the arbitration award.

4901:1-7-13 Transit Traffic Compensation

CBT is pleased that proposed new rule 4901:1-7-12(E) would allow blocking of calls to and from carriers that do not have interconnection agreements. However, this

principle is partially undermined in proposed rule 4901:1-13(C)(2), which prohibits a carrier from refusing transit traffic if the originating and terminating carriers have a compensation arrangement in place that covers transit traffic. However, proposed rule 4901:1-7-13(C)(2) does not require that the originating and terminating parties have a compensation arrangement directly with the transit carrier, as opposed to amongst themselves. The compensation arrangement for transit traffic should take into account the interests of the transit carrier in order to allow it to properly measure, bill and collect for its transit services. The best means of accomplishing that would be to require the transiting parties to have a compensation arrangement directly with the transit carrier, not just between themselves. Otherwise, the originating and terminating carriers could attempt to impose unfair terms on the transit carrier.

4901:1-7-22 Customer Migration

Rule 4901:1-7-22(A) is the only Commission rule addressing the obligations of CLECs to process orders received from their competitors. This rule should also require CLECs to process other carriers' migration orders within the same provisioning intervals that CLECs have obtained from the ILECs. Without such a requirement, there is no reliable method to ensure timely service from CLECs. CBT has encountered numerous situations where a CLEC (particularly one that processes number portability orders for an indirectly connected VoIP provider) does not promptly port numbers, causing customers to be out of service or calls to be misrouted. The customer may not understand why service is not smoothly transferred and might blame the new carrier for any problems. Therefore, the Commission should provide more specific timing requirements in proposed rule 4901:1-7-22(A) for CLECs to execute service orders from other carriers.

Subsection (E) of this rule should be clarified so as not to prohibit winback efforts in two situations, even if there are pending orders. First, the prohibition should not apply to marketing campaigns if those specific customers were not targeted *because* they had pending orders for service from a competing carrier. Carriers should not be prohibited from including customers who have ordered service from a competitor in general marketing campaigns if those customers were included in the campaign for a reason other than the fact of their pending order. For example, a carrier might develop a new bundle of services and conduct a direct mail campaign to customers who meet a certain demographic profile or who currently subscribe to other services that make them likely prospects for the new bundle. The fact that a customer receiving the mailing also happened to have a pending order with a competitor played no part in their inclusion in the marketing campaign and should not be a reason for disqualifying them from receiving the marketing material or placing an order. The only way to *exclude* customers with pending orders from ongoing marketing campaigns would be to *use* knowledge of their pending order. That would require creation of a process to share wholesale order information with marketing departments, something the Commission otherwise seeks to prohibit.

The second situation that should be excluded from the rule is when the customer initiates contact with the current carrier. Customers who have been solicited by competitors often contact their current service provider to shop for a better offer, even where they have already ordered the competitor's service. When it is the customer who initiates the contact, there should not be any prohibition on the current carrier marketing to that customer even while a competitor's order is pending. After all, the point of having

competition for telephone service is so that customers can reap the benefit of competing proposals. When the customer initiates the contact, the current carrier cannot be accused of misusing confidential carrier information. There is no public interest reason to stifle the present service provider from actively competing for that customer.

In neither of these scenarios does the current carrier act based upon knowledge that there was a pending order or any other information that it received from the competing carrier. The Commission should encourage vigorous competition and exempt these situations from the proposed prohibition on marketing to customers with pending orders.

4901:1-7-26 Competition Safeguards

Proposed rule 4901:1-7-26 appears, at least in part, to be an effort to duplicate restrictions on the use of proprietary information established in 47 U.S.C. § 222. To the extent it does so, the rule is unnecessary, as it merely repeats restrictions that already exist as a matter of law. For example, part (A)(1)(b)(i) directs carriers to comply with § 222 and the accompanying federal regulations.[1] Other parts of the rule attempt to repeat the substantive requirements of federal law, which is also unnecessary and will lead to inconsistency and confusion. The federal rules on this subject are adequate on their own and do not require state supplementation. All of these issues are already adequately addressed by 47 U.S.C. § 222 and the Commission should not upset the delicate balancing of interests already established under federal law.

In addition, there are at least three specific provisions in proposed rule 4901:1-7-26 that go far beyond the restrictions required by federal law and which would

[1] This rule also shares the flaw noted at the outset of these comments of requiring compliance with federal law as it existed on November 1, 2006. Should federal law on the subject change, there is no reason for state law to mandate compliance with outdated versions of federal law.

unreasonably interfere with the ability of LECs to conduct their business. First, part (A)(1)(c) would prohibit telephone companies from sharing competitively advantageous information that *is not CPNI* with their affiliates if they do not share the same information with their competitors. Second, part (A)(2) would require confidential treatment of everything learned from a competitor, whether or not the information is truly confidential. Third, part (A)(3) would prohibit any information exchange between the wholesale and retail operations of telephone companies.

The implications of these rules are astounding. For one, information that is not deemed worthy of CPNI protection under federal law, regardless of its nature or how it was obtained, would be elevated to an even higher protected stature under state law than CPNI. Telephone companies are not prohibited from sharing even CPNI with their affiliates, so there is no justification for imposing even greater restrictions on information that is *not* CPNI. Congress and the FCC carefully considered what proprietary information should be subject to restrictions and crafted the definition of CPNI so as not to be overly limiting. Furthermore, a reviewing court found that the FCC's original attempts at restricting the shared use of CPNI were overly broad and violated First Amendment protections. *U S West v. FCC*, 182 F.3d 1224, 1239 (10th Cir. 1999) (imposition of opt-in rules on usage of CPNI impermissibly regulated protected commercial speech). The proposed rule would ignore the prior jurisprudence on the subject and make everything that is *not* CPNI subject to *stricter* limitations than anything that *is* CPNI. If the information does not qualify as CPNI, there is no justification for imposing even stricter limitations on its use than would be permitted for CPNI itself.

In addition to this significant legal flaw, as a practical matter the rule would render useless any effort to create competitive intelligence, as it could not be used without sharing it with the competition. No other type of competitive business is forced to operate under such restrictions. In fact, the voluntary sharing of competitive information among competitors is usually viewed disapprovingly by regulators as *anti-*competitive.

Forcing telephone companies to share competitive information with their non-affiliated competitors is contrary to the FCC rules regarding use of CPNI information. In response to the Tenth Circuit decision, the FCC devised a new dual opt-in/opt-out approach for obtaining a customer's approval for the use and disclosure of CPNI in accordance with § 222. Specifically, the FCC found that an opt-in approval for intra-company and affiliate use and disclosure of CPNI could not be justified. The FCC, therefore, determined that the less restrictive notice and opt-out approval was necessary to protect customer's CPNI when the information was to be used and disclosed within the company as well as by joint venture partners and agents to market and provide communications-related services. Under the opt-out procedure a customer must specifically veto the LEC's planned use of the CPNI after receiving notice of the LEC's intentions. The FCC further concluded that there is a more substantial privacy interest with respect to third-party disclosures. For that reason, the FCC retained the more stringent notice and opt-in approval requirement for the use and disclosure of CPNI to third parties and to a LEC's affiliates that do not provide communications-related services.

The significance of this dual procedure is that carriers are permitted to use *either* the opt-in or the less stringent opt-out approach for purposes of providing CPNI to their affiliated entities, joint venture partners, and third party agents who are providing communications-related services. The more stringent opt-in procedure is required for purposes of disclosing CPNI to unrelated third parties and affiliates that do not provide communications-related services. By requiring equal treatment of affiliates and non-affiliates, the Commission's Rule effectively precludes a LEC from using its federally guaranteed right to use the less restrictive opt-out procedure to share information with its affiliates because that procedure is not available for sharing CPNI with non-affiliates under the federal rules. Under the Tenth Circuit's analysis, such a result would be unlikely to withstand constitutional scrutiny and may be deemed an impermissible restriction on the LECs' commercial speech. Therefore, the Commission should revise this rule so as not to require LECs to share market information with their competitors.

4901:1-7-27 Reporting Requirements

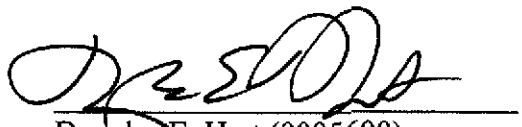
This rule is unclear whether it merely requires filing with the Commission of the same reports that are already filed with the FCC or whether it seeks the creation of new market reports based on different jurisdictional areas. If the former, CBT has no objection to providing the Commission with copies of its FCC Form 477, but questions the purpose of such a duplicative filing. If the Commission seeks to require a different market report than the FCC Form 477, that could require the creation of a new reporting process that does not currently exist or the sorting of data in a fashion in which it is not gathered or retained. CLEC affiliates of ILECs that engage in competitive market activities in multiple ILEC territories do not necessarily track their activities by ILEC

market area. The proposed rule is open-ended and does not specify what information the reports would contain. CBT would discourage the Commission from creating new recordkeeping requirements that serve no business purpose and would impose costs on carriers simply to create and maintain a reporting process.

Conclusion

CBT submits that proposed rules in the Staff Proposal should be revised in accordance with the foregoing comments.

Respectfully submitted,



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