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January 5, 2007

Via Hand Delivery

Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

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

In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines; PUCO 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; PUCO Case No. 99-563-TP-COI

Dear Ms. Jenkins:

Enclosed are an original and fifteen (15) copies of Initial Comments, to be filed on behalf of Verizon in connection with the above-referenced matters.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,

Carolyn S. Flahive

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Enclosure

cc: Jay Agranoff, Attorney Examiner
Jeffrey Jones, Chief, Telephone Section

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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

COMMENTS OF VERIZON

Verizon North Inc., MCImetro Access Transmission Services LLC d/b/a/ Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance and NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions (collectively, "Verizon") file these comments pursuant to the Order issued in this docket on November 21, 2006, requesting comments on the proposed Carrier-to-Carrier Rules ("Carrier Rules" or "Rules").

I. INTRODUCTION

It has been about 10 years since the federal Telecommunications Act of 1996 was passed, and the negotiation/arbitration process under the Act is now well established. The FCC has issued numerous rules and orders that govern both the substance and procedure of interconnection. The interconnection process has been working in Ohio, and no issues have been raised that demand the extensive rules now proposed. Indeed, there have been no approved carrier-to-carrier rules codified in the Ohio Administrative Code since local interconnection began in 1996, and there is no reason to believe extensive new interconnection rules are needed now.

Local interconnection is a matter of federal law. States have no authority to issue conflicting rules; redundant state rules offer nothing and can undermine the interconnection process. For example, identical state rules could be construed differently than the controlling federal requirements, which would inject confusion and uncertainty into the process. Also, the proposed rules cite to federal rules, which causes confusion because the federal citations in the proposed rules do not automatically change when the federal rules change.[1] Even if new state rules would only address matters that have not yet been addressed under federal law, they will most certainly be tested in federal litigation, which again only creates more cost for interconnection and imposes delay. Finally, over the last 10 years the industry has developed practices and procedures that have passed the test of time. To the extent these rules require changes to the status quo they could destabilize the interconnection process and cause unnecessary expense, possibly even eliminating some competitors.

The carrier-to-carrier rules should be limited to a few critical matters that give direction to the interconnection process in Ohio: Rules, 1-7-04 and 1-7-05, 1-7-08 and 1-7-09, 1-7-10, 1-7-12, 1-7-14, 1-7-22 and 1-7-28. They must include language stating that the rules do not conflict with federal law and that they must be interpreted consistently with federal law. Finally, any rules that establish methods for communicating between parties (e.g., U.S. mail, facsimile, hand delivery, etc.) should also include email as an alternative communication option that parties may agree to use. Today, email is a widely used method that carriers use to communicate.

In short, the Commission should reduce the number of carrier-to-carrier rules and, for the

[1] Not all of the references to the November 1, 2006, version of the federal rules are highlighted in these comments, although this type of redlined change should be made to all such references throughout the rules.

rules that remain, increase the flexibility for carriers to interconnect with each other. Finally, the rules must clearly state that, in the event of a conflict with federal law, federal law shall prevail.

II. COMMENTS ON SPECIFIC RULES

The various sections of the proposed rules that Verizon addresses – including some rules in addition to the minimal number identified above in the event the Commission still decides to consider them - are set forth below, along with Verizon's proposed redlined changes to them and an explanation as to why the redline suggested changes are appropriate.

4901: 1-7-02 General applicability

The carrier obligations found in rules 4901:1-7-03 to 4901:1-7-29 of the Administrative Code, shall apply to all telephone companies pursuant to 47 U.S.C. 251 and 252~~, as effective on November 1, 2006~~, including those companies not operating pursuant to a qualifying alternative regulation plan pursuant to rules 4901:1-4-01 to 4901:1-4-12 of the Administrative Code. **These rules must be interpreted consistently with federal law and, in the event of a conflict between these rules and federal law, federal law shall prevail.**

As pointed out in the introductory section above, these rules must be consistent with federal law. A provision specifically stating this should be added to this section of the rules. Also, the November 1, 2006, date should be deleted throughout the rules.

4901: 1-7-04 Rural telephone company exemption

(A)A rural telephone company is subject to the provisional rural telephone exemption referenced in of 47 U.S.C. § 251f1~~, as effective on November 1, 2006,~~ until such time as the rural telephone company receives a bona fide request (BFR) for interconnection and the commission reviews such request. Should a nonrural telephone company sell, devise, assign, or otherwise transfer any portion of its facilities to a rural telephone company and such facilities are subject to an interconnection agreement(s) at the time of the transfer, such facilities shall remain subject to all obligations of the existing interconnection agreement(s). However, such facilities will not be subject to requirements referenced in 47 U.S.C. §252i~~, as effective on November 1, 2006~~.

(B) If a rural telephone company receives a BFR for interconnection services or network elements **pursuant to 47 U.S.C. §251(c)** and it seeks to maintain a rural telephone company exemption, it shall file an unclassified (UNC) application with the commission within fifteen calendar days after receiving the request. The telephone company requesting interconnection shall file a response within fifteen calendar days after the rural telephone company's application for exemption. The burden of proof regarding the termination of a rural telephone company exemption rests upon the **rural** telephone company ~~requesting interconnection~~.

Verizon recommends that the Commission adopt the redlined suggested changes to the proposed rules in this section to address unnecessary litigation that could be created by this rule. The proposed rule would require that every request for interconnection with a rural company be treated as a BFR to terminate the rural exemption. This proposal is unnecessary and wasteful. Where Verizon operates as a CLEC, its most common requests for interconnection to rural companies involve only Sections 251(a) and (b), and do not involve section 251(c). As set forth in Section 251(f)(1)(A), the rural exemption only applies to 251(c). Federal law is clear that no rural exemption is applicable where a CLEC seeks to negotiate the terms under sections 251(a) and (b) (e.g., the duty to interconnect directly or indirectly; not to impose unreasonable or discriminatory conditions or limitations on the resale of its telecommunications services; to provide number portability, dialing parity, access to rights-of-way, and the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.) A rule requiring that every BFR be interpreted as a challenge to a rural carrier company's status would create delay, aggravation, unnecessary litigation and expense. To require litigation of every BFR request, including those not even designed to implicate the rural exemption, would be a waste of the commission's time and of the resources of the carriers, and would be inconsistent with governing federal law.

Another recommended change is in the last sentence of Section (B) where the proposed rule would put the burden of proof to lift the rural exemption on the requesting carrier.

Elsewhere in the rules, the Commission proposes to bar carriers from assessing charges for termination of local traffic where there is no interconnection agreement in place between the companies. (See, e.g., 4901:1-7-12). Here, the Commission is creating a barrier to inhibit CLECs from establishing those ICAs with rural carriers that are needed to charge for terminating local traffic. When a CLEC that is terminating EAS traffic to the rural company seeks to obtain appropriate compensation for this activity and seeks an interconnection agreement, the rural carrier has a strong economic incentive to hide behind its claimed rural exemption to avoid paying for the traffic it is terminating on the CLEC's network. It does not make sense to allow the rural carrier that has the better knowledge of all of the pertinent facts relating to its claimed rural status to escape paying for the CLEC's termination of local traffic.

Finally, when referring to a federal rule, the Commission should simply reference the particular federal rule, as it may change from time to time. If the federal rule changes, then to be consistent with the federal law, the Ohio rule should also change. It does not make sense to lock in an Ohio-specific version of a federal rule that may be subject to change in the future. Accordingly, the references to the federal rules as they existed on November 1, 2006, should be deleted as indicated above.

4901:1-7-12 Compensation for the transport and termination of telecommunications traffic

(D)Reciprocal compensation arrangements

(1) Rates, terms, and conditions for the transport and termination of reciprocal compensation traffic**, other than for relations between two CLECs,** shall be established through interconnection agreements arrived at **via** ~~either through~~ **voluntary** negotiation or **compulsory** arbitration **pursuant 47 U.S.C. §§ 251 and 252. Such rates, terms and conditions applicable between one CLEC and another CLEC may be established through tariffs or voluntary agreements.** An ILEC's rates for transport and termination of reciprocal compensation traffic shall be established, at the commission's discretion, on the basis of:

(a) The forward-looking economic costs of such offerings, using a cost study pursuant to rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code;

(b) Interim rates in an arbitration proceeding, as provided in rule 4901:1-7-18 of the Administrative Code; or
(c) A bill and keep arrangement, as provided in paragraph (D)(3) of rule 4901:1-7-12 of the Administrative Code.

(2) Symmetrical reciprocal compensation
(a) For purposes of this section, symmetrical rates are rates that a telephone company assesses upon an ILEC for transport and termination of reciprocal compensation traffic equal to the rates that the ILEC assesses upon the telephone company for the same services.
(b) Rates for transport and termination of reciprocal compensation traffic shall be symmetrical unless the nonILEC telephone company (or the smaller of two ILECs) proves to the commission, on the basis of a forward-looking economic cost study pursuant to rule 4901:1-7-19 of the Administrative Code, that its forward-looking costs for its network exceed the costs incurred by the ILEC (or the larger ILEC), and that justifies a higher rate.
(c) If both parties to the compensation arrangement are ILECs, **~~or neither party is an ILEC,~~** symmetrical rates for transport and termination of reciprocal compensation traffic shall be based on the larger telephone company's forward-looking costs. **If both parties are CLECs, and the parties do not agree to another rate to the contrary, the rate for transport and termination of reciprocal compensation traffic shall be no higher than the composite rate of an ILEC which has more than one million lines in this state.**

In general, the above rules presume that all carriers can enter into ICAs with one another pursuant to the voluntary negotiation or compulsory arbitration provisions of Section 252 of the Federal Telecommunications Act. This is not the case because one CLEC can not force another CLEC to arbitrate an ICA. Portions of the rule need to be changed to reflect this reality.

Since one CLEC can not compel another CLEC to arbitrate an interconnection agreement, the Ohio rules could be read to allow the CLEC that is originating a disproportionate amount of local traffic and transmitting it to the other CLEC to avoid paying any compensation to the terminating CLEC simply by not entering into an interconnection agreement. For example, if CLEC A knows that it originates more local traffic terminating to CLEC B than CLEC B originates and sends to CLEC A, then CLEC A will have a great financial disincentive to enter into an agreement where that agreement would require it to pay reciprocal compensation to CLEC B. There is nothing that CLEC B can do to create an ICA with CLEC A, and CLEC A can avoid paying compensation for the termination of its local calls to CLEC B.

Further, a policy that mandates interconnection agreements between all CLECs would be inefficient. In Ohio there are more than 30 CLECs. If each CLEC were required to have an interconnection agreement with one another, there would have to be more than 435 interconnection agreements under the Ohio rules simply for CLEC to CLEC arrangements. And, if these CLEC to CLEC agreements had 3 year terms, then every three years the Commission would have to approve about an additional 435 ICAs on top of its current work load. This would also impose a burdensome workload on the CLECs in Ohio.

A better alternative would be to allow CLECs to meet their obligation under Section 251(b) of the Federal Telecommunications Act to establish reciprocal compensation arrangements by filing tariffs for local termination with a local termination rate no higher than the composite TELRIC interconnection rate of a major ILEC which has more than one million lines in the state. This approach would have the benefits of authorizing a rate previously approved by the Ohio Commission, would avoid requiring CLECs to develop cost studies, would be easy to implement, would be uniform and reciprocal among CLECs, and would be easy to enforce. The reason why a composite rate should be used is that CLECs have different rate structures than a large ILEC like AT&T and a composite rate is something that can be readily implemented even though the rate structures might be different between a CLEC and a large ILEC.

4901:1-7-14 Compensation for intrastate switched access traffic and carrier-to-carrier tariff

(A) For purposes of this rule:

(1) "Nonrural incumbent local exchange carrier (ILEC)" shall mean an incumbent local exchange carrier that is not a "rural telephone company" under 47 U.S.C.

153(37), as effective on November 1, 2006.

(2) "Rural competitive local exchange carrier (CLEC)" shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

(a) An incorporated place of fifty thousand inhabitants or more based on the most recently available population statistics of the census bureau.

(b) An urbanized area, as defined by the census bureau.

(B) The current prevailing ILEC intrastate switched access tariffs, including all rates, terms, and conditions pursuant to case nos. 83-464-TP-COI and 00-127-TP-COI, shall be used by ILECs for compensation for termination and origination of switched access telecommunications traffic originated from and/or terminated by other telephone companies.

(C) When filing for certification under rule 4901:1-6-11 of the Administrative Code, facilities-based CLECs shall tariff the rates, terms, and conditions for compensation for the termination and origination of intrastate switched access traffic originated and/or terminated by other telephone companies. A CLEC shall cap its rates, on a rate element basis, at the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access traffic, unless:

(1) The CLEC is a rural CLEC competing with a non-rural ILEC and its rates are capped at national exchange carrier association (NECA) access rates.

(2) The CLEC is transitioning its rates to the benchmark rate in accordance with the federal communication commission's (FCC's) order in CC Docket No. 96-92, released April 27, 2001.

(D) Facilities-based CLEC carrier-to-carrier intrastate switched access tariff not filed as part of its certification process pursuant to rule 4901:1-6-10, shall be filed in an application for tariff amendment (ATA) proceeding and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-08 of the Administrative Code.

Rule 4901:1-7-14 must be substantially revised because it is (as the Commission has recognized) based on a severely outdated record and would undermine the Commission's avowed goal of access reform.

Six years ago, the Commission ordered Ameritech Ohio, Cincinnati Bell Telephone Company, Sprint/United, and Verizon to reduce their intrastate access rates to mirror the interstate access rates the FCC adopted under the proposal of the Coalition for Affordable Local and Long Distance Services ("CALLS").[2] The Commission concluded that the CALLS rates "will benefit consumers, are pro-competitive, and will promote economic efficiency." Access Charge Order at 14. The Commission nevertheless deferred modification of the smaller ILECs' access rates until it could consider the FCC's pending MAG Plan and Rural Task Force Orders. *Id.* at 15.

Those Orders issued in 2001,[3] so Commission action on the remaining ILECs' access rates is years overdue. As an alternative to proceeding immediately in the open (but dormant) access reform docket, the Commission should revise rule 4901:1-7-14 to achieve across-the-board access reform. Indeed, just weeks ago, this Commission told the FCC that it needed no federal inducement to pursue access reform, because it had already concluded that "reductions in intrastate access rates serve the public good."[4] In this regard, the Commission touted its "long established policy of mirroring interstate access rates on the intrastate side for ILECs and cap[ping] the intrastate access rates of CLECs at the intrastate access rate of the ILEC in whose territory they compete." *Id.* at 27.

To make good on its stated commitment to access reform, however, the Commission must address *all* access rates, including those of the non-CALLS ILECs. The simplest and most efficient way to do so is through a uniform rule moving all carriers' rates to levels consistent

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[2] *Investigation into the Modification of Intrastate Access Charges*, Opinion and Order, Case No. 00-127-TP-COI (OH PUC Jan. 11, 2001) ("Access Charge Order"). The CALLS Order is *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000).

[3] *See Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, Second Report and Order and Further Notice of Proposed Rulemaking, and *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Report and Order ("MAG Plan Order") (Nov. 8, 2001); Fourteenth Report and Order and Twenty-second Order on Reconsideration, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (May 23, 2001) ("Rural Task ForceOrder").

[4] Comments of the Public Utilities Commission of Ohio, *Developing a Unified Intercarrier compensation Regime*, CC Docket No. 01-92, at 42-43, 27 (filed October 25, 2006) ("Ohio PUC Comments").

with the CALLS rates the large ILECs must charge. This solution best promotes the Commission's strong policy preference for "a market-based approach to setting intrastate access charges,"[5] because the CALLS rates are the product of negotiations between sophisticated carriers with equivalent bargaining power. They are, therefore, representative of rates that would be produced through commercial negotiations in a competitive market. Moreover, as noted, the Commission has already determined that the CALLS rates promote competition and benefit consumers. Access Reform Order at 14. Extending implementation of CALLS-level rates to all local exchange carriers will, therefore, expand the benefits these rates produce.

If the Commission is reluctant to move all carriers directly to CALLS rates, it could use a phased approach under which carriers would first reduce their intrastate access rates to their own interstate access rate levels. This intermediate step would merely implement the mirroring that is supposed to be the Commission's policy today.[6] This first step could then be followed by a further reduction to the CALLS rates at a fixed interval thereafter. Under either approach, all CLEC rates should be capped at the new, lower rates charged by the ILEC in the same service area.[7]

Ultimately, intercarrier compensation rates at both the state and federal level should be determined by commercial negotiations in a free market. Taking the steps proposed here will ensure that in the interim, rates for all carriers are set at a level that will promote competition and

[5] Access Reform Order at 13. ("[A] competitive marketplace is generally better at establishing appropriate prices than intermittent regulatory determinations....we are faced with a preference for competitive pricing, but with the knowledge that the actual reductions have largely resulted only regulatory intervention.")
[6] As part of any access reduction plan, carriers should be given the opportunity to recover lost revenues through rate rebalancing and/or end-user charges.
[7] The final rule language must (unlike the existing subsection C) apply to all CLECs, without exception, and recognize that CLECs' access rate structures may differ from the ILECs'. Instead of requiring a CLEC to cap its rate at the ILEC rate "on a rate element basis," the rule should specify that a CLEC's aggregate charges for all of the rate elements that comprise its switched access service may not exceed the ILEC's aggregate charges for all rate elements that comprise its switched access service.

economic efficiency, and that put all carriers on an equal footing during the transition to a regime of commercial negotiations.

4901:1-7-19 Forward-looking economic costs

(B) TELRIC

(4) Cost of capital

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity) reflecting the risks of a competitive market, that includes a reasonable level of profit. An ILEC may use a unbundled network element-specific forward-looking cost of capital in calculating the TELRIC-based cost for that unbundled network element**, and such cost of capital may reflect any unique risks associated with new services that might be provided over that element**.

The above proposed revisions to this Section appear intended to reflect the TELRIC clarifications in the TRO. As such, the cost of capital may include risks that are inherent in promoting new services using UNEs. However, that is not clear from the language in the proposed rule. Thus, Verizon suggests the additional language to make sure that this section clearly reflects the specificity in TRO Para. 683.

4901:1-7-22 Customer migration

(A) Each competitive local exchange carrier (CLEC) shall be required to provide systems to facilitate the migration of customers between local exchange carriers (LECs). Such systems may be manual but must enable another LEC to migrate customers efficiently from that CLEC's network. Such systems shall include, but not be limited to: systems required to preorder, order, install, and repair, service, and billing for local service. CLEC responses to customer service record requests shall include information sufficient to facilitate customer migration between LECs. For the purposes of this rule, customer service information includes but is not limited to:

(1) Customer service records – detailed identification of the tariffed services to which the customer is subscribed.

(2) Service completion confirmation – the verification and notification that all tasks associated with a service order **requiring physical work, such as moving circuits,** have been completed. **A service completion confirmation is not needed when a request for a port out only has been submitted.**

(3) Line loss notification – the notification to a LEC that an end-use customer has initiated a transition to another LEC.

(4) Completion notices – notice that all work to effect a customer migration has

been completed

(5) Circuit identification - the manner and system a carrier uses to identify physical circuits under its control, if applicable.

(6) 911 and directory listings.

(B) All telephone companies shall use the industry developed formats, or a mutually agreed equivalent, for **ordering, pre-ordering and billing** ~~the exchange of customer account information~~ between telephone companies.

(C) Telephone companies responding to a **valid and correct** request for customer service records **(CSRs)** shall provide such information to the requesting telephone company within two business days. **Telephone companies responding to valid and correct local service requests (LSRs) shall follow the North American Numbering Council (NANC) industry standards including the NANC timelines.**

(G) Telephone companies shall submit customer service record requests to the customer's existing telephone company **or its designated agent**~~and not to the underlying network provider~~.

The suggested changes to Section (A) are appropriate because no service completion confirmation needs to be sent where there is just a "port-out" request, such as a request for local number portability only. The only time that a service completion notification should be sent is when there has been a request for physical work such as moving circuits.

Additional clarity is required in Section (B) to show that the only areas that are subject to industry standards are ordering, pre-ordering, and billing. If the Commission does not make these changes, then the Commission would be creating confusion and uncertainty regarding the intent of this proposed rule.

In Section (C), the changes are required to clarify that the timeline to respond with the information sought in a customer service request (CSR) is only triggered once a valid and correct CSR has been submitted. This clarification addresses situations in which carriers submit either inaccurate or incomplete CSRs. In such situations, there should be no obligation to provide the requested information. Additionally, the proposed rules do not address any timeline for responding to local service requests (LSRs). The timeline to respond to LSRs should be in accordance with the industry standards set by the North American Numbering Council (NANC).

Section (G) should be modified to take into account certain situations in which the customer's existing telephone company has designated an agent to receive CSRs. This agent could be the underlying network provider. For example, Vonage uses a number of different underlying network providers across the country and also uses other companies to receive and process CSRs. If the customer's existing provider does not have the capability or resources to respond to CSRs, but instead has hired or contracted with another vendor to provide this service, then other carriers should be allowed to contact that other vendor directly.

4901:1-7-26 Competition safeguards

(A) Code of conduct

(1) Disclosure of information.

(a) Definitions

(i) For the purpose of this rule, "customer network proprietary information" (CPNI) shall be defined in accordance with 47 U.S.C. § 222h1~~, as effective on November 1, 2006~~.

(ii) For the purpose of this rule, "subscriber list information" shall be defined in accordance with 47 U.S.C. § 222h3~~, as effective on November 1, 2006~~.

(b) Customer proprietary network information (CPNI)

(i) The use of CPNI by any telephone company must comply with 47 U.S.C. §222~~, as effective on November 1, 2006,~~ and 47 C.F.R. §§ 64.2001 to 64.2009~~, as effective on November 1, 2006~~.

(ii) No local exchange carrier (LEC) shall access or use the CPNI held by either an interconnecting LEC or a LEC reselling its services for the purpose of marketing its services to either the interconnecting LEC's customers or reselling LEC's customers.

~~(c) No telephone company shall disclose any competitively advantageous information not defined as CPNI under 47 U.S.C. 222h1, as effective on November 1, 2006, to its affiliates without contemporaneously and in the same manner making it available to nonaffiliated competitors.~~

(d) To the extent a telephone company makes subscriber list information available to affiliated competitors within its service territory for purposes other than the publishing of directories, it must also do so on a nondiscriminatory basis with all unaffiliated competitors certified to provide service in its service territory.

(i) This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.

(ii) This provision does not apply to information subject to a customer request to either release or withhold information.

(2) Competitor information
Telephone companies shall treat as confidential all information obtained from a competitor, both affiliated and nonaffiliated, and shall not release such information unless a competitor provides authorization to do so.

(3) Retail/wholesale transfer of information
All telephone companies shall treat as confidential all information obtained by their wholesale operations other telephone companies and shall not share any information between its retail and wholesale functions.

(4) Records
All telephone companies shall maintain information to enable the commission to determine whether they have satisfied paragraph (A) of this rule.

The Commission should eliminate Section (A)(1)(c) of this rule, as set forth above. This rule, absent the suggested redlined changes above, would regulate how carriers manage a whole new category of information that needs no regulation and that generally is not currently subject to state or federal regulation. That information is "any competitively advantageous information not defined as CPNI." Taken at face value, this would include both information that relates to telecommunications services but is not defined as CPNI, and information that relates to non-telecommunications services.

If the rule is intended to require carriers to share all of their customer information related to non-telecommunications services, it would go well beyond the Commission's regulatory authority as many services are interstate in nature. For example, network management services and Internet conferencing are clearly beyond the jurisdiction of this Commission. Other non-CPNI confidential information could be highly confidential intellectual property that is protected by trade secret, patent, and other laws. As written, the proposed rule could be interpreted as applying to intellectual property and forcing the disclosure of this valuable information. Still other non-CPNI confidential information is particularly commercially sensitive, reflecting aspects of service and pricing that are important to competition and should be protected from disclosure. Carriers should not be required to disclose such information, including commercial wholesale rates, terms and conditions, or interstate service level agreements with large customers.

In defining CPNI, Congress focused on the types of customer information that are considered most worthy of protection. To now say that everything else deserves to be regulated, too, is overreaching on a breathtaking scale, as this would impose disclosure requirements that neither Congress, the FCC, nor any other state has adopted. The required sharing of certain customer information, where appropriate, is specific and focused, such as the sharing of a customer's name, address and telephone number, which is already subject to Section 272 nondiscrimination requirements. (*See,* Order on Reconsideration and Petitions for Forbearance, 14 F.C.C.R. 14409, CC Docket Nos. 96-115 and 96-149, Released Sept. 3, 1999 ("Reconsideration Order") at Par. 146). There is no need or justification for this Commission to require that additional information be shared; the Federal Act and the FCC have already addressed this.

In addition, this disclosure requirement in the proposed rule is fundamentally inconsistent with the recognition in the existing CPNI rules that carriers regularly use affiliates to provide different services, and that carriers should be able to share information among their affiliates that serve the same customers without being burdened by restrictions on how and when they may do so. For example, 47 CFR §64.2005(a)(1) allows a carrier to share a customer's CPNI among its affiliates that also provide a service to that customer. (See also, Second Report and Order and Further Notice of Proposed Rulemaking, 13 F.C.C.R 8061, CC Docket Nos. 96-115 and 96-149, rel. February 26, 1998, ("Second Order"), ¶ 51-52 "... We believe that the sharing of CPNI permitted under the total service approach among affiliated telecommunications entities best balances the goals of Section 222 to safeguard customer privacy and promote fair competition.") The FCC explicitly rejected the notion that CPNI should also be subject to the disclosure rules of Section 272, concluding that to do so would "as a practical matter ... bar BOCs from sharing CPNI with their affiliates..." Order on Reconsideration and Petitions for Forbearance, CC Docket Nos. 96-115 and 96-149, Released Sept. 3, 1999 ("Reconsideration Order"), ¶141.

The FCC's own CPNI rules impose greater limitations on disclosures to unrelated third parties than to affiliates, requiring that all such disclosures receive affirmative consent from customers before being allowed to occur. (Compare 47 CFR 64.2007(b)(1), allowing opt-in or opt-out approval for sharing with affiliates and other commercially-related parties, and (b)(3) , requiring opt-in consent for all other uses of CPNI, which would include sharing with unrelated third parties). See also Third Report and Order and Third Further Notice of Proposed Rulemaking, CC Docket Nos. 96-115, 96-149, and 00-257, Released July 25, 2002, ¶¶ 57 and 58 (noting that most carriers consider it inappropriate to disclose CPNI to unaffiliated third parties for their independent use without express customer approval).

In addition to being inappropriate, the language in the rule is overbroad and unclear. What information is "competitively advantageous"? Competitors can be expected to claim that any information a carrier shares with its affiliates is competitively advantageous.

It is also unclear how a carrier would comply with the rule. How could a carrier make any information it shares with an affiliate "contemporaneously" available to competitors, and "in the same manner"? Would it need to publish on its website every piece of information shared with an affiliate and offer to provide it to any competitor who asks for it? Doing so would be tremendously burdensome. And why would it need to be provided "in the same manner" it is shared with affiliates? Would that require creating electronic interfaces for competitors if carriers already have them with their affiliates?

There is no justification for these unusual and onerous requirements. It should not be based on some notion of preventing carriers who provide multiple services from benefiting competitively from that information. The CPNI rules already restrict the sharing of information with affiliates that do not already serve the same customers.[8]

Because the proposed Ohio rule would restrict carriers' speech rights, in order to withstand constitutional scrutiny, the Commission will need to show that the rule is narrowly tailored to serve a compelling state interest. See, U.S. West v. FCC, 182 F.3d 1224, 1233 (10th Cir. 1999) ("If this threshold requirement is met, the government may restrict the speech only if it proves: "(1) it has a substantial state interest in regulating the speech, (2) the regulation directly and materially advances that interest, and (3) the regulation is no more extensive than necessary to serve the interest."). Note that in U.S. West, the 10th Circuit threw out the FCC's opt-in requirement for obtaining consent to use and share CPNI, ruling that the FCC had not established that less restrictive means (such as an opt-out approach) were inadequate to meet the regulation's purpose. Id. at 1238-39.

In focusing on affiliates, the rule seems just to disadvantage carriers who use multiple affiliates to provide service over those that have a less decentralized corporate structure. This approach is disfavored. See, Second Order at ¶ 52 (rejecting CPNI distinctions based solely on corporate structure).

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[8] Notwithstanding the fact that it is sunsetting, Section 272 bars RBOCs from discriminating in their provision of "information," without imposing the additional impractical details of time and manner contained in the Ohio proposed rule. See, 47 USC 272(C)(1). See also, Reconsideration Order at ¶ 145-147 which discusses the interplay between Sections 222 and 272.

Finally, similar to the point raised in other portions of these comments, the Commission should delete all references in the rules to adopting certain federal rules as they existed on a specific date. If the federal rules change, then the rules in Ohio would become automatically inconsistent with the new federal rules. Also, having Ohio rules which are inconsistent with federal rules forces carriers into the Hobson's choice of complying with one set of rules and violating the other. The Ohio rules should be in sync with the federal rules, and stay in sync with the federal rules as they continue to evolve.

4901:1-7-27 – Reporting Requirements

(A) All local exchange carriers (LECs) that report market information to the federal communications commission must submit market information reports on a semi-annual basis in the format required by the Ohio commission similar in form and content to FCC form 477.

(B) This market information must be reported **by ILECS** at the incumbent local exchange carrier service area level rather than at the state level on semi-annual basis on March first and September first. Each reporting **I**LEC must provide the information electronically in the exact format made available on the commission's web site. The instructions reflected on the commission's web site, as may be modified from time-to-time, must be followed strictly, with no alterations.

It is unnecessary – and costly for affected carriers – to duplicate at the state level any reporting requirements that already exist at the federal level. These requirements therefore should be eliminated. If the Commission for some reason declines to eliminate the requirements, then Verizon requests that the recommended redlined changes be made to this section. Where Verizon operates as a CLEC, it has no objection to providing the Ohio portion of the FCC form 477 each time it is filed. However, beyond that CLECs cannot comply. The rule basically requires that the FCC form 477 data (which is state level) be provided on an ILEC service area level. CLECs do not track information that way and have no reasonable way to somehow "shoehorn" available information into such a format. Accordingly, this portion of the rule should only apply to ILECs and the Verizon suggested redlined changes above should be adopted.

4901:1-7-29 Local exchange carrier default

(B)If it is determined that further investigation is warranted or that immediate termination may not be in the public interest, the commission or an attorney examiner may direct the company to ~~suspend~~ **stay** the termination **up to 15 calendar days while** ~~until~~ further investigation or until the defaulting LEC's customer can be properly noticed. This section is not intended to replace any default or dispute resolution provisions contained in an agreement between the LECs. Rather, it is an additional requirement should a default trigger the potential for termination of ~~access~~ **service** from the aggrieved LEC's network.

Verizon requests that the recommended redlined changes be made to this section. The word "suspend" may be interpreted to mean disregard and they could result in sending a new default notice. The word "stay" implies a temporary or limited timeframe. The phrase "up to 15 calendar days while" was added because the rules have no timeframes established and every day of inaction is lost revenues to the LEC. The word "access" has been removed and replaced with the more general term "service" as there can be many services to which a company may subscribe.

CONCLUSION

For the reasons stated above, Verizon requests that its comments be adopted and the draft Rules be amended accordingly.

Respectfully submitted,

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