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COMMUNICATIONS™

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Via Overnight Mail & E-File

January 5, 2007

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

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 One Communications to be filed in connection with the above referenced proceeding.

Questions regarding this filing may be directed to me at the below address or by telephone at (585) 530-2841.

Sincerely,

R. Edward Price (ns)

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Cc: Service List

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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 ONE COMMUNICATIONS

One Communications Corp. ("One Communications")[1] hereby submits these comments concerning the Commission's proposed carrier-to-carrier rules issued on November 21, 2006, in the above-captioned proceeding. One Communications commends the Commission on its efforts to establish rules governing the provision of wholesale telecommunications services in Ohio. As a general matter, such rules will provide additional certainty to carriers that supply and procure wholesale services, including interconnection, collocation, and local termination services as mandated by the Telecommunications Act of 1996. The proposed rules, however, require a small number of changes to ensure that the market for competitive telecommunications services to end users in Ohio continues to thrive. One Communications sets forth below the changes it believes are necessary, centering on the areas of interconnection, CLEC access charges, customer migration, and competition safeguards.

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1 One Communications, a facilities-based CLEC, is the resulting company from the merger of the parent companies of Choice One Communications of Ohio Inc., CTC Communications Corp., and FiberNet of Ohio, LLC, all of which are licensed carriers in Ohio.

Discussion

I. Interconnection

A. *Section 4901:1-7-06*

One Communications supports the Commission's general interconnection standards set forth in Section 4901:1-7-06(A) of the proposed rules. These standards are consistent with the interconnection requirements contained in Section 251 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the "Act"). The requirements for a bona fide request ("BFR") for interconnection contained in Section 4901:1-7-06(B) of the proposed rules, however, are too onerous, are not necessary to give effect to the interconnection provisions contained in the Act, do not reflect industry practices, and are inconsistent with the Act's pro-competitive policies due to the burdens they would place on existing competitors and new market entrants.

Under Section 4901:1-7-06(B), carriers requesting interconnection with another carrier would need to issue a BFR specifying, *inter alia*: the requested meet points or points of collocation; a forecast of cross-connect capacity, the amount and type of collocation space, and power and environmental conditioning that will be required during the term of the interconnection agreement; a description of interface equipment for each meet point; the requested reciprocal compensation arrangement; a "detailed description and forecast of any required unbundled network elements and the requested method of access to the operation support system associated with these unbundled network elements"; any requested access to poles, ducts, conduits, rights of way, white pages listings, E911, directory assistance, operator service any dialing parity; a list of services to be offered for resale and the required operational support systems associated with those services; and the requested methods of providing transit traffic functionality at each point of interconnection.

In contrast to this litany of requirements for what should be a simple interconnection request, Sections 251 and 252 of the Act say only that carriers have a duty to negotiate interconnection arrangements and lay out the various time frames during which negotiation and arbitration must take place following the receipt of an interconnection request. CLECs are not required under the Act to provide detailed forecasts, collocation points, descriptions of interface equipment, or any other type of information to an ILEC before requesting interconnection. For this reason, the Commission's proposed BFR requirements are contrary to the federal interconnection negotiation paradigm. Section 251(d)(3) of the Act allows states to maintain interconnection regulations as long as they are consistent with Section 251 and do not "substantially prevent implementation of the requirements" of the Act. By requiring CLECs to provide ILECs with BFRs containing minute details, the competitive and market-opening purposes that underlie the Act would be hindered.

Current industry practices are consistent with the federal requirements and not with what is being proposed for Ohio. Under those practices, CLECs need only issue a simple request for interconnection to an ILEC, not provide all of the information specified in Section 4901:1-7-06(B). This is the procedure that ILECs are used to, and states typically have not sought to go beyond what is required by federal law. In fact, the term "bona fide request," in industry parlance, refers not to a request to commence negotiations but rather to a request by a CLEC with an existing interconnection agreement to establish an interconnection arrangement or element that is not covered by the existing agreement. The Commission's proposed rules therefore confuse what the industry now understands to be a BFR (a request by a CLEC for a unique arrangement with an ILEC not covered by their interconnection agreement) with what should be, under federal law, a simple request to begin negotiations to establish a new interconnection agreement or to amend or renew an existing agreement.

In addition to being inconsistent with federal law and with industry practices, the BFR provisions that the Commission has proposed would not be good policy. They are overly burdensome on all parties involved, particularly CLECs, and thus would be a hindrance to competition in Ohio. Indeed, ILECs in Ohio could attempt to deny interconnection requests on the grounds that some minute piece of information required under Section 4901:1-7-06(B) was not present in the BFR — a right that ILECs do not have under federal law.

For these reasons, the Commission should remove Section 4901:1-7-06(B) from its proposed rules.

B. Section 4901:1-7-07

Section 4901:1-7-07 of the proposed rules suffers from the same malady as 4901:1-7-06(B). This section sets forth detailed requirements on how CLECs must transmit interconnection requests, timeframes, and substantive requirements for ILEC responses. Section 4901:1-7-07 also subjects requests for amendments to existing interconnection agreements to the BFR requirements from 4901:1-7-06(B) and allows ILECs to charge CLECs a BFR fee (Section 4901:1-7-07(E)). Again, these types of requirements are not present in the federal law, and the Commission should not impose burdens on interconnecting carriers that could be a hindrance to competition, including a

BFR fee[2] and detailed timelines. Matters relating to timelines are better left to the negotiating parties themselves, who are only required under federal law to commence negotiations following an interconnection request and then take the matter to arbitration during a particular window of time if the negotiations last for a certain period.

To ensure that Section 4901:1-7-07 is pro-competitive and not inconsistent with federal law, the Commission should at the very least eliminate Section 4901:1-7-07(B) (imposing the BFR requirement on amendments to interconnection agreements) and Section 4901:1-7-07(E) (establishing a BFR fee). These subsections impose requirements that are inconsistent with industry practices, Section 251 of the Act and its underlying pro-competitive policies, as well as the long-standing policies of the Commission in favor of competition in Ohio. They would hinder, rather than promote, competition in the State.

II. CLEC Access Charge Rate Cap — Section 4901:1-7-14(C)

Section 4901:1-7-14(C) of the proposed rules would require CLECs to match the intrastate access charges of the ILECs in their areas. This requirement would be ill-advised and anticompetitive because it does not account for variations in network costs among ILECs and CLECs. CLECs do not have exactly the same network costs as ILECs. Network scale and scope have a large impact on these costs, and it is arbitrary to require CLECs to match ILEC rates. Doing so would place CLECs at a competitive disadvantage compared to ILECs because CLECs would be forced to originate and

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[2] For true BFRs relating to requests for unique arrangements under an existing interconnection agreement (discussed above), fees may be appropriate. These are typically set forth in interconnection agreements themselves, and it is not necessary for state law to impose them on requests to commence interconnection negotiations.

terminate traffic on their networks at ILEC rates, even if they have higher costs than the ILEC, thereby providing the ILEC with a competitive advantage.

The access rates currently charged by CLECs are tariffed, have been approved by the Commission as being reasonable, and are capped at January 2001 levels (subject to the ability of CLECs to raise rates if they are cost-justified).[3] There is no basis on which the Commission should now overturn these determinations and require CLECs to match ILEC rates. Moreover, implementing a mandatory CLEC access charge matching requirement would impose unnecessary administrative costs on the Commission and on CLECs. Although Section 4901:1-7-14(C) is silent on this matter, CLECs would presumably be required to file revised tariffs with new rates matching those of the ILECs. This, of course, takes away precious resources from the Commission's staff to review those filings, as well as CLECs to prepare them and go through the process of changing their rates — resources that could be better used to devote to serving consumers in Ohio.

The Commission should therefore delete Section 4901:1-7-14(C) from its proposed rules. Alternatively, the Commission should at least modify the rule to allow CLECs to charge above-ILEC access rates if those rates are cost-justified, as they are now allowed to do under Ohio's existing rate cap.[4] Such allowances for cost variation are present elsewhere in the Commission's rules. For example, Section 4901:1-7-12(D)(2)(b) of the proposed rules enables CLECs and small ILECs to charge asymmetrical reciprocal compensation rates if they can demonstrate that such rates are cost-justified. The same flexibility should continue to apply to access rates. At the very

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3 *See Re Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Opinion and Order (Jan. 11, 2001), at 14.

4 *See id.*

least, if the Commission decides to impose an access rate matching requirement, it should allow CLECs to lower their rates in stages, similar to the way in which the FCC implemented its interstate access charge matching requirement.[5] This will prevent "revenue shock" and will cushion the effect of the rate reductions on CLECs' business plans.

III. Customer Migration — Section 4901:1-7-22

One Communications agrees with the Commission's inclusion of customer migration provisions in its carrier-to-carrier rules. It is essential in a competitive marketplace for customers to be able to move to a different carrier and for all LECs to have systems in place that facilitate such migration. However, Section 4901:1-7-22(A) imposes this requirement only on CLECs and not on all LECs. This provision should be changed, consistent with the rest of Section 4901:1-7-22 following subsection (A), to encompass all local service providers so as to ensure that ILEC to CLEC, as well as CLEC to CLEC and CLEC to ILEC, migrations are covered. Additionally, in Section 4901:1-7-22(A)(1) the word "tariffed" should be deleted so that the customer service records include information on all services to which the customer is subscribed, not just tariffed services.

The Commission should also strengthen Section 4901:1-7-22(D) and make it clear that there is no valid reason for a carrier to prevent a migration. As currently written, the proposed rule places the burden of proof on the carrier preventing the migration to "demonstrate a valid reason for retaining the facilities, resources or information in question." The problem with this is that there should be no valid reason for a carrier to do that, and the Commission's rules should be clear on this matter. Other states have

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5 *See* 47 C.F.R. § 61.26.

explicitly mandated, for example, that carriers not refuse a customer migration because of an unpaid balance and not require the new carrier to provide a copy of the customer's letter of authorization.

The Maine PUC's end-user migration guidelines, for instance, say that "[i]t is the end user's choice to migrate from one LSP [local service provider] to another. Neither the Old LSP nor the Old NSP [network service provider] may block an end user's desire to migrate or to port a telephone number of an active account for any reason, including unpaid amounts owed."[6] The Maine guidelines also state that the "authorization to view a CSR need not be sent to the current LSP"[7] and that "[a] LEC may not withhold CSR or CSI information, or fail or refuse to take any action necessary to migrate an End User's service, on the ground that the End User has an unpaid balance or otherwise owes or would owe it money."[8]

One Communications therefore suggests that Section 4901:1-7-22(D) make it clear that there is no valid reason to prevent migration of a customer, that carriers may not refuse a migration request based on an unpaid balance, and that carriers may not require a new carrier to provide the customer's letter of authorization. In order to do this, One Communications suggests that Section 4901:1-7-22(D) read as follows:

> No telephone company, having obtained facilities, resources or information for the purpose of serving a specific customer, shall, upon the receipt of a request to migrate that customer or for customer service information relating to that customer, continue to hold, or fail to release said facilities, resources or information for any reason, including, for example, on the grounds that there is an unpaid customer balance or that

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6 Maine End-User Migration Guidelines at 7, *available at* http://mainegov-images.informe.org/mpuc/industries/telecom/telecommunications/CLEC_CLEC_guidelines.pdf.

7 *Id.* at 9.

8 *Id.* at 16.

> such telephone company has not received a copy of the customer's authorization therefor.

IV. Competition Safeguards

A. Section 4901:1-7-26(A)(1)

To ensure that carriers use customer information in a way that is not anticompetitive, all the Commission needs to do is require that they comply with the customer proprietary network information ("CPNI") provisions contained in federal law. This is accomplished in Section 4901:1-7-26(A)(1)(b) of the proposed rules. Sections 4901:1-7-26(A)(1)(c) and (d), however, impose burdens of confidentiality that are overly broad, burdensome, imprecise, and unnecessary. It is particularly unclear why these provisions should apply to CLECs that are unaffiliated with an ILEC. If the Commission is concerned about ILECs sharing information with their affiliates (for example, their CLEC affiliates) then this rule should be more narrowly tailored to reflect that concern.

Specifically, Section 4901:1-7-26(A)(1)(c) would require that carriers not "disclose any competitively advantageous information not defined as CPNI . . . to its affiliates without contemporaneously and in the same manner making it available to nonaffiliated competitors." The term "competitively advantageous information not defined as CPNI" is itself undefined in the proposed rules, and so carriers would face great uncertainty as to what types of information they would be prohibited from sharing with their affiliates. It is also unclear why this provision is necessary.

The definition of CPNI from Section 222(h)(1) of the Act, which is incorporated into the proposed rules, is as follows:

> (A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier,

> and that made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
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> (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier . . . .[9]

This definition adequately covers the types of competitively relevant customer information that should be of concern to the Commission in ensuring healthy competition in Ohio. The imposition of an additional rule in the form of Section 4901:1-7-26(A)(1)(c), encompassing other "competitively advantageous information not defined as CPNI," will only create uncertainty for carriers and is therefore arbitrary and unnecessary.

B. Sections 4901:1-7-26(A)(2) and (3)

Section 4901:1-7-26(A)(2) of the proposed rules would require that carriers "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." Section 4901:1-7-26(A)(3) of the proposed rules goes on to require that all carriers "treat as confidential all information obtained by their wholesale operations [from] other telephone companies and shall not share any information between its retail and wholesale functions." Taken together, these rules are presumably intended to prevent wholesale carriers from using proprietary information from other carriers to obtain a competitive advantage in the retail marketplace. This purpose would be better served by a single, more narrowly tailored rule.

Section 4901:1-7-26(A)(2), as proposed, is unnecessarily broad because it encompasses all information received from competitors — not just information of a

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9 47 U.S.C. § 222(h)(1).

proprietary nature — and applies to both affiliated an unaffiliated competitors. Also, it prohibits carriers from releasing that information, but not from using it internally in their marketing operations. Section 4901:1-7-26(A)(3) is also too broad because (1) it requires all information received by a wholesale carrier from another carrier to be treated as confidential, not just proprietary information, and (2) prevents a carrier's wholesale operation from sharing *any* information with its retail operation, not just confidential information received from another carrier.

A potential model for the Commission would be the federal provision on *confidentiality of carrier information contained in Section 222(b) of the Act. That section* provides as follows: "A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purposes, and shall not use such information for its own marketing efforts."[10] This applies only to "proprietary" information that carriers receive from other carriers and not simply to all information. It also prohibits carriers from using that proprietary information in their own marketing operation. The Commission should consider revising its proposed rules on carrier information accordingly.

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[10] 47 U.S.C. § 222(b).

Conclusion

One Communications commends the Commission on its efforts to establish carrier-to-carrier rules. Based on the foregoing discussion, One Communications respectfully suggests that some of the Commission's proposed rules be revised or eliminated so that they will be more effective in achieving their purpose of ensuring a competitive and vibrant telecommunications marketplace in Ohio.

Respectfully submitted,

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