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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

ENTRY ON REHEARING

The Commission finds:

(1) On August 22, 2007, the Commission issued its opinion and order in this proceeding adopting carrier-to-carrier rules (Chapter 4901:1-7, Ohio Administrative Code [O.A.C.]), as set forth in the appendix to the opinion and order.

(2) Applications for rehearing to the August 22, 2007, Opinion and Order were filed on September 21, 2007, by the following entities: Arcadia Telephone Company, The Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, The Benton Ridge Telephone Company, Buckland Telephone Company, The Champaign Telephone Company, Columbus Grove Telephone Company, The Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, The Germantown Independent Telephone Company, The Glandorf Telephone Company, Inc., Kalida Telephone Inc., Little Miami Telephone Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, The New Knoxville Telephone Company, The Nova Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, The Ottoville Mutual Telephone Company, Pattersonville Telephone Company, The Ridgeville Telephone Company, Sherwood Mutual Telephone Association Inc., The Sycamore Telephone Company, Vanlue Telephone Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company (collectively, Small ILECs); One Communications Corp. (One Communication); Verizon North Inc., MCImetro Access Transmission Services LLC dba Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, Bell Atlantic Communications, Inc. dba Verizon Long Distance, and NYNEX Long Distance Company dba Verizon Enterprise Solutions (collectively, Verizon); and

AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, Inc., SBC Long Distance LLC dba AT&T Long Distance, and their Ohio wireless affiliates (collectively, AT&T). Memorandum Contra applications for rehearing were timely filed by AT&T, Verizon, Time Warner Telecom of Ohio, LLC (Time Warner Telecom), the office of the Ohio Consumers' Counsel (OCC), and the Ohio Cable Telecommunications Association (OCTA).

(3) Section 4903.10, Revised Code, among other things, provides that any affected person, firm, or corporation may make an application for rehearing within 30 days following the journalization of the order. The Commission may grant and hold a rehearing on the matters specified in the application if, in its judgment, sufficient reason appears.

(4) On October 5, 2007, OCC filed a motion to strike portions of certain memoranda contra applications for rehearing. Specifically, OCC moves to strike those portions of AT&T's and Verizon's memoranda which it asserts are not memoranda contra but, in actuality, are memoranda in support. OCC notes that, pursuant to Rule 4901-1-35, O.A.C., only memoranda contra applications for rehearing, and not memoranda in support of applications for rehearing, may be filed with the Commission. OCC asserts that the designated portions of AT&T's and Verizon's memoranda are clearly arguments in support of another party's application for rehearing (OCC Motion to Strike at 1-3).

(5) AT&T and Verizon on October 11, 2007, and October 12, 2007, respectively, filed memoranda contra OCC's motion to strike. In particular, AT&T states that it is appropriate for a party, when addressing numerous claimed errors in other parties' applications for rehearing, to clarify where there is agreement. AT&T asserts that OCC has not been harmed in any manner as a result of the contested portions of the memoranda contra, especially in light of the fact that AT&T was simply further clarifying the debate on a subject raised by other parties and for which OCC already had an opportunity to respond (AT&T Memorandum Contra OCC's Motion to Strike at 1-3). Verizon asserts that the Commission clearly has the authority to consider whether there are factors present that establish the appropriateness of Verizon's supporting statements. Additionally, similar to AT&T, Verizon asserts that OCC is not harmed by the supporting statements (Verizon

Memorandum Contra OCC Motion to Strike at 2, 3). On October 12, 2007, OCC filed a reply to AT&T's memoranda contra.

(6) OCC's motion to strike should be granted. In reaching this decision, the Commission agrees with OCC's assertion that Rule 4901-1-35, O.A.C., is limited in scope to the filing of memorandum contra applications for rehearing. To the extent that a party believes that it is necessary to inform the Commission of its support for another party's rehearing position, the appropriate motion for leave to file a memorandum in support should be submitted for the Commission's consideration. Inasmuch as the identified portions of AT&T's and Verizon's memoranda contra are in actuality memoranda in support, the following sections shall be stricken:

(a) Verizon memorandum:

The first and second sentences of the first paragraph under "Introduction".

The first section under "Argument" beginning on page 2 through the top of page 5.

The first sentence under "Conclusion".

(b) AT&T memorandum

The section under "Access Charge Structure," beginning on page 10 through the middle of page 13.

The section under "Termination of Service to Defaulting Carriers," beginning on page 17 through the top of page 18.

The section under "Time Frame for Negotiation of Interconnection Agreements" on page 18.

The section under "Statutory Reference" on page 21.

The phrase "and on the AT&T-supported grounds," in the Conclusion section on page 21.

(7) Paragraph (F) of adopted Rule 4901:1-7-03 requires, among other things, that a LEC read a random listing of toll providers if a new customer is unable to select a toll provider at the time the customer initiates local service. With respect to Rule 4901:1-7-03(F), O.A.C., AT&T submits that on rehearing the Commission should remove the equal access scripting requirement set forth in the rule. In support of its recommendation, AT&T references a recent Federal Communications Commission (FCC) decision adopted August 30, 2007, *In the Matters of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket No. 02-112, *2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules*, CC Docket No. 00-175, *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, WC Docket No. 06-120, Report and Order and Memorandum Opinion and Order, FCC 07-159, adopted August 30, 2007, released August 31, 2007 (Long Distance Order) (AT&T Application for Rehearing at 10-14).[1]

Due to this decision, AT&T asserts that the FCC has established a new framework to govern the provision of in-region, long distance services by the Regional Bell Operating Companies and their independent incumbent local exchange carrier affiliates. According to AT&T, this new framework allows AT&T, Qwest, and Verizon to provide in-region, interstate, long distance, services either directly or through affiliates that are neither Section 272 separate affiliates nor separate affiliates pursuant to 47 C.F.R. 64.1903. AT&T highlights the fact that the FCC has stated that this new framework "replaces unnecessarily burdensome regulation with less intrusive measures that protect important customer interests while allowing the Bell Operating Companies . . . to respond to marketplace demands efficiently and effectively" (*Id.* at 11 citing Long Distance Order at ¶1).

1 Concurrent with its application for rehearing on this issue, AT&T filed a motion in Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, seeking a waiver of Local Service Guideline X.E.4 that requires LECs to read a random listing of all available intraLATA carriers. The Commission notes that upon the effective implementation date of the carrier-to-carrier rules, the Local Service Guidelines will become moot and be superseded by the new Chapters 4901:1-6 and 4901:1-7, O.A.C.

Additionally, AT&T states that, in its Long Distance Order, the FCC also granted AT&T's petition for forbearance from application of the equal access scripting requirement (*Id.* at 12 citing Long Distance Order at ¶2). AT&T points out that the FCC, in reaching its decision, noted that the stand-alone long distance competition that the scripting requirement was designed to protect has largely given way to competition between service bundles that include both local exchange and long distance calling (*Id.* citing Long Distance Order at ¶121). AT&T also focuses on the FCC's determination that the minority of customers that still take stand-alone long distance services now have additional options available for making long distance calls (*Id.* citing Long Distance Order at ¶122). AT&T also notes that the FCC determined that the equal access scripting requirements may actually confuse or mislead consumers inasmuch as they are limited to presubscribed wireline long distance providers (*Id.* at 13 citing Long Distance Order at ¶122).

For all of the same reasons cited by the FCC in its Long Distance Order for removing the equal access scripting requirement for interstate long distance service, AT&T advocates that the Commission remove the scripting requirement for intraLATA long distance inasmuch as the intent behind both sets of requirements is no longer served by their continued application (*Id.* at 13, 14).

(8) OCC asserts that the Commission should deny AT&T's request for rehearing regarding the equal access scripting requirement. In support of its position, OCC notes that although the FCC has removed the interstate interLATA equal access scripting requirement for regional Bell Operating Companies, the resolution of this same issue for state purposes is not governed by federal preemption (OCC Memorandum Contra at 2). OCC points out that AT&T did not raise the issue of equal access scripting in its comments in this proceeding despite its then pending petition before the FCC (*Id.* at 3). Additionally, OCC also avers that AT&T's application for rehearing is premised on the belief that the FCC's Long Distance Order applies to all local exchange companies (LECs). Finally, OCC asserts that the rationale for FCC's Long Distance Order is flawed and that the time for appeal of the decision has not yet run (*Id.* at 3-5).

(9) In regard to AT&T's rehearing request to eliminate the equal access scripting requirement from the carrier-to-carrier rules, this request is granted, in part, and denied, in part, as discussed herein. We concluded in our Opinion and Order adopting these rules that as a result of the maturation of the long distance market and the extensive mass marketing efforts by carriers, consumers are more informed today of their telecommunications choices than they were 10 years ago when we first established the presubscription guidelines. In its Long Distance Order, the FCC found that, for the Bell Operating Companies, the current equal access scripting requirement is likely to distort competition for stand-alone long distance services by focusing solely on one type of competitive alternative which could hinder consumer's awareness of competitive alternatives (Long Distance Order at ¶123). We note that, as OCC points out, the applicability of the FCC's forbearance decision is limited to AT&T and Verizon in Ohio (Long Distance Order at ¶125). Similarly, we find that maintaining the equal access scripting requirement for AT&T and Verizon on the intrastate side will effectively increase the potential for customer confusion that the FCC's decision is designed to avoid. Likewise, we believe that if we eliminate the equal access scripting requirement for all LECs, as requested by AT&T, while the requirement remains in effect on the interstate side for LECs other than AT&T and Verizon, it will likely result in customer confusion. Accordingly, adopted Rule 4901:1-7-03(F) shall be revised to remove the equal access scripting requirement for all competitive local exchange companies (CLECs), AT&T and Verizon, while maintaining such requirement for all other LECs.

(10) With respect to adopted Rule 4901:1-7-08, O.A.C., Verizon asserts that the adopted rule is unreasonable because it does not specify a permitted time frame for parties to negotiate interconnection agreements. Specifically, Verizon submits that while the Telecommunications Act of 1996 (1996 Act) provides parties with at least 160 days to negotiate an interconnection agreement, adopted Rule 4901:1-7-08, does not reflect that parties should be able to negotiate for a full 160 days. Consistent with its stated concern, Verizon recommends that the following language be added to the rule:

> Parties to a negotiated interconnection agreement shall have a 160-day period to complete their

negotiations independent from involvement of a state commission or other third party mediator.

(Verizon Application for Rehearing at 1).

(11) Verizon's application for rehearing regarding the proper time frame for parties to negotiate interconnection agreements is denied. In reaching this decision, we find that, while adopted Rule 4901:1-7-08 does not set a specific time frame for parties' negotiation, adopted Rule 4901:1-7-09(A) specifies the arbitration window mandated by the 1996 Act. We note that Section 252(a)(2) of the 1996 Act allows a party to the negotiation to ask the state commission to participate in the negotiation and to mediate any differences *at any point in the negotiation* (emphasis added). We also note that Rule 4901:1-7-09(I) reflects the anticipation that parties may continue negotiations even after filing for arbitration and may reach voluntary agreement afterwards. Therefore, we find that Verizon's requested language provides an unnecessary limitation on negotiating carriers that is not consistent with the provisions and the spirit of the 1996 Act.

(12) With respect to adopted Rule 4901:1-7-12(B)(1), O.A.C., Verizon asserts that the adopted rule is unreasonable because it will require the renegotiation of interconnection agreements and is contrary to existing federal law. Specifically, Verizon asserts that the restriction that extended area service (EAS) trunks be only used to carry originally intended local traffic is in direct conflict with agreements that have been established over the past 10 years to accomplish indirect interconnection (Verizon Application for Rehearing at 2).

In support of its position, Verizon points out that Section 251(a)(1) requires all carriers to interconnect directly or indirectly with all other providers. Verizon questions how, pursuant to the rule, trunks will be identified as EAS trunks or how the original intent for the establishment of a trunk can be determined. Further, while the adopted rule allows for an exception if the parties to the agreement agree otherwise, Verizon questions how this can be enforced in practice (*Id.* at 2, 3).

Verizon also contends that the proposed rule is inconsistent with the FCC's recent decision in *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carrier and Call Blocking by*

Carriers, Declaratory Ruling and Order, ¶6, and the FCC's long standing concern with call blocking and the negative effect it may have on the reliability of the nation's telecommunications network (*Id.* at 3).

(13) AT&T opposes Verizon's application for rehearing relative to this issue. AT&T asserts that it is important that EAS trunks be used exclusively for EAS traffic, unless other arrangements have been agreed to by the LECs at both ends of those trunks. AT&T disputes Verizon's assertion that it is unclear how trunks would be identified as EAS trunks. Rather, AT&T Ohio states that each trunk group that AT&T creates has its own unique header which is used to identify the pertinent aspects of the particular trunk group (AT&T Memorandum Contra at 18-21).

(14) Verizon's application for rehearing regarding the requirement that EAS trunks be used only to carry the originally intended local traffic unless the LECs on both ends of the EAS trunks mutually agree otherwise is denied. We disagree with Verizon's claim that the identification of a trunk group as "EAS trunks" is a novel concept. As pointed out by AT&T, this is an industry-wide term utilized to identify trunks engaged in the exchange of EAS traffic between LECs (AT&T Memorandum Contra at 19-21). We also find that Verizon's reference to the FCC's declaratory ruling prohibiting traffic blocking is misplaced and irrelevant to the adopted rule inasmuch as it neither requires traffic blocking nor addresses misrouted calls.

(15) With respect to adopted Rule 4901:1-7-12(D)(2)(e)(ii), O.A.C., One Communications asserts that the rule directly contradicts 47 C.F.R. 51.711(a)(3)., which it believes allows a CLEC to receive the tandem interconnection rate for reciprocal compensation traffic, regardless of where it interconnects with the incumbent local exchange company (ILEC), provided the CLEC switch serves a geographic area comparable to the area served by the ILEC's tandem switch. One Communications submits that there is no way to reconcile the FCC's rule with adopted Rule 4901:1-7-12(D)(2)(e)(ii), which according to One Communications provides that "regardless of the area served" by the CLEC switch, the CLEC is only entitled to end office termination where the telephone company interconnects at the ILEC's end office (One Call Application for Rehearing at 4).

(16) AT&T objects to One Communications' request for rehearing on this issue based on its belief that it would produce a result directly contrary to the Commission precedents relative to the application of the FCC rule. Specifically, AT&T references the Commission's 2001 Arbitration Award in the AT&T/TCG and Ameritech Ohio arbitration in Case No. 00-1188-TP-ARB, *In the Matter of the Application of AT&T Communications of Ohio Inc. and TCG Ohio for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with SBC Ohio.* AT&T represents that the Commission concluded that legacy AT&T switches satisfied the geographic comparability test and that AT&T was eligible for compensation at the tandem interconnection rate only when legacy AT&T terminated Ameritech-originated local traffic carried over tandem interconnection facilities. AT&T also states that the Commission determined that when the legacy AT&T switch is directly interconnected to an Ameritech end office switch, legacy AT&T will be compensated at the end office rate for terminating local traffic originating from the Ameritech end office switch (AT&T Memorandum Contra at 13-16).

(17) The Commission finds that One Communications fails to raise any new argument not already considered in the Opinion and Order adopting the rules. Accordingly, One Communications' application for rehearing on this issue is denied. In response to an identical argument raised by OCTA, the Commission found that the adopted rule is consistent with 47 C.F.R. 51.711(a), as well as ¶1090 of *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (rel. August 8, 1996) (Opinion and Order at 45, 46). We find that One Communication's argument is focused on the sole provision of 47 C.F.R. 51.711(a)(3) in isolation of the provision of 47 C.F.R. 51.711(a)(1). We also point out that the Commission has previously determined in numerous arbitration proceedings that, pursuant to all provisions of 47 C.F.R. 51.711(a), if a CLEC is interconnected at an ILEC end office, the end office compensation rate will apply (*Id.*).

(18) With respect to paragraphs (C) and (D) of adopted Rule 4901:1-7-13 and the requirement that an intermediate telephone company cannot refuse to carry transit traffic and the requirement that the intermediate telephone company must be compensated at the intermediate telephone company's total element long run

incremental cost (TELRIC)-based transit traffic compensation rates, AT&T asserts that these conclusions conflict with established federal law and impose new requirements on AT&T that are prohibited by state law (AT&T Application for Rehearing at 5).

In particular, AT&T asserts that Section 4905.041, Revised Code, prohibits the Commission from establishing any requirements, including those related to pricing, for the unbundling of network elements, the resale of telecommunications services, or network interconnection that exceed or are inconsistent with or prohibited by federal law.

In regard to the obligation of carrying transit traffic, AT&T submits there is no such obligation based on federal law (e.g., Section 251). With respect to the obligation to establish pricing for transit traffic at TELRIC rates, AT&T asserts that such obligation is directly contrary to federal law. Specifically, AT&T avers that the FCC's Wireline Competition Bureau has specifically declined to find that ILECs have an obligation to provide a transit function at TELRIC prices. *In the Matter of the Petition of Worldcom, Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration,* Memorandum Opinion and Order, DA 02-1731, 17 FCC Rcd 27,039 at ¶117 (July 17, 2002) (Virginia Arbitration Order); *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration,* Order on Reconsideration, DA 04-1276, 19 FCC Rcd. 8467 at ¶3 (May 14, 2004) (Order on Reconsideration of Virginia Arbitration Order).

Further, AT&T submits that the Wireline Competition Bureau's analysis was confirmed by the FCC itself in its determination that FCC rules do not even require incumbent LECs to provide transiting, regardless of whether it is offered at a TELRIC price or not (*Id.* at 6 citing *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338 et al., FCC 03-36, 18 FCC Rcd 16978 at ¶534, August 21, 2003 [Triennial Review Order]). Finally, AT&T avers that a TELRIC rate for transit traffic is inappropriate inasmuch as transit service has not been determined to be a Section 251 unbundled network element (*Id.* at 10).

(19) OCTA rejects AT&T's application for rehearing regarding the Commission's determination that ILECs must provide transit traffic to third-party carriers, as well as the Commission's determination that the transit traffic functionality must be provided at TELRIC-based rates. OCTA avers that the provision of transit functionality on reasonable terms is an essential element of the duty of all telecommunications carriers to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. Specifically, OCTA represents that the FCC has recognized that the duty of indirect interconnection imposes a transit obligation on intermediary ILECs and the duty to accept transited traffic by the terminating LEC [OCTA Memorandum Contra at 2 citing *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 1549, ¶997 (1996); *In re Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, FCC 05-33, ¶¶ 125, 126 (March 3, 2005); *In re Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, (February 10, 2005)].

Further, OCTA submits that nothing in the statutory language of Sections 251(b)(5) and 251(c)(2) of the 1996 Act suggests that the interconnection obligation is limited to traffic that originates or terminates on a LEC's own network (*Id.* at 3). Additionally, OCTA points out that it is almost always more efficient in terms of overall use of network resources, to use a preexisting tandem to send traffic between two smaller providers already connected at that tandem. Therefore, OCTA believes that it makes sense as a matter of sound public policy to ensure that the transiting functionality is available on reasonable terms (*Id.* at 4, 5).

OCTA posits that confirming a transit obligation on ILECs pursuant to Sections 251(b)(5) and 251(c)(2) of the 1996 Act promotes facilities-based competition due to the fact that it ensures that the terms and conditions for transit service are contained in interconnection agreements and would establish both a pricing standard and a dispute resolution for transit service. Inasmuch as it believes that there is no competitive market for transit services, OCTA asserts that the service must be priced based on TELRIC costing principles rather than relying on nonexistent competitive market forces (*Id.* at 5). OCTA notes that at least 13 other states have similarly concluded that transit traffic must be offered by ILECs and priced at TELRIC rates (*Id.* at 6).

(20) Similar to OCTA, Time Warner Telecom rejects AT&T's application for rehearing with respect to the determination that the transit traffic functionality must be provided pursuant to Section 251 and that it must be priced on a TELRIC basis (Time Warner Telecom Memorandum Contra for Rehearing at 1). In response to AT&T's contention that paragraphs (C) and (D) of adopted Rule 4901:1-7-13 violates Section 4905.041, Revised Code, Time Warner Telecom asserts that there is no such federal law, regulation, or pronouncement for which the adopted rule is in violation. To the extent that AT&T relies on *In the Matter of Petition of WorldCom Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes With Verizon Virginia Inc. and for Expedited Arbitration,* Time Warner Telecom asserts that: (a) the arbitration decision does not constitute a federal law or regulation; and (b) the FCC has yet to make a clear decision regarding the obligations of telecommunications carriers and their obligation to provide a transiting functionality (*Id.* at 2, 3).

(21) First, we address AT&T's argument that the Commission's conclusion that "all telephone companies, including tandem providers, have the duty to interconnect with the facilities and equipment of other telephone companies pursuant to Section 251(a)(1) of the 1996 Act" is in conflict with the established federal law and imposes new requirements on AT&T that are prohibited by state law (AT&T Application for Rehearing at 4, 5). We note that AT&T has failed to identify any conflicting federal law. Additionally, while AT&T claims that the Commission has premised the transiting obligation based upon the language of Section 251(a)(1) of the 1996 Act (AT&T Application for Rehearing at 7), we find that this claim ignores the Commission's statement that transit service is governed by Section 251(c)(2)(A) of the 1996 Act (Opinion and Order at 52).

We note that AT&T does not dispute that, pursuant to Section 251(c)(2)(A), ILECs are obligated to provide for the <u>transmission</u>

and routing of telephone exchange service and exchange access of any requesting telecommunications carrier. The statute does not require the transmission and termination of telephone exchange service and exchange access and, therefore, does not limit the interconnection obligation under Section 251(c)(2)(A) to the mutual exchange of traffic originated and terminated between the ILEC and the interconnecting telephone company (emphasis added). Thus, we determine that, consistent with Section 251(c)(2)(A), an ILEC is obligated to interconnect with the requesting telephone company for the transmission and routing of telephone exchange service and exchange access destined to the requesting telephone company's end-user, as well as to a third-party telephone company. Additionally, we note that our determination here is consistent with the FCC's conclusion[2] as well as the United States Court of Appeals for the District of Columbia's decision affirming that the term "interconnection," as it is used in Section 251(a)(1), cannot reasonably be interpreted to encompass a general requirement to transport and terminate traffic. Also, we would clarify that this obligation pursuant to Section 251(c)(2)(A), to provide interconnection for transit functionality is limited to ILECs, and does not apply to non-ILECs. However, any non-ILEC that elects to provide transit functionality must comply with adopted Rule 4901:1-7-13 as well, except for the requirement to set rates for transit service compensation on a TELRIC basis. Non-ILECs must charge their switched access rates for the transiting function.

Additionally, we find that the statements[3] cited by AT&T confirm only that the FCC and its Wireline Competition Bureau have not yet developed any rule to address transit service. Such references and statements do not support AT&T's argument that the Commission's adopted Rule in 4901:1-7-13(D) is in conflict with the established federal law or that it imposes new requirements

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2 *In the Matter of Total Telecommunications Services Inc. and Atlas Telephone Company, Inc. v. AT&TCorporation*, File No. E-97-003. Memorandum Opinion and Order, FCC 01-84, 16 FCC Rcd 5726 (2001), aff'd. in part, remanded in part, *AT&T Corporation v. FCC*, 317 F.3d 227 (D.C. Circuit 2003).

3 Virginia Arbitration Order at ¶117.

Order on Reconsideration of Virginia Arbitration Order at 1¶ 3.

Triennial Review Order at ¶ 534 n. 1640.

on AT&T that are prohibited by state law. As to the application of Section 4905.041, Revised Code, there is no established federal regulation addressing transit service for this Commission rule to exceed with for which the Commission could be inconsistent.

Next, we address AT&T's argument that the Commission's conclusion that establishing pricing for transit traffic at TELRIC rates directly contrary to federal law, as interpreted by the FCC's orders (AT&T Application for Rehearing at 5). Again, we find that there is no established federal rule addressing pricing for transit service that conflicts with the Commission's adopted rule. Accordingly, AT&T's application for rehearing on this issue is denied.

(22) In regard to adopted Rule 4901:1-7-14(D), Small ILECs assert that the Commission erred in adopting a rule requiring that "edge-out" ILECs bill different access rates when providing service outside their traditional service areas. Specifically, Small ILECs contend that the adopted rule is administratively burdensome inasmuch as the EDGE-OUT ILEC will be required to provide access at one rate in its historic territory and at different access rates in each territory that it serves pursuant to its "edge-out" authority. In particular, Small ILECs aver that it is extremely difficult to administer different access rates within the same central office code (Small ILECs Application for Rehearing at 2). Small ILECs assert that an "edge-out" ILEC is not a CLEC and that an "edge-out" ILEC has a different cost structure than a CLEC (*Id.* at 2, 3). Additionally, Small ILECs believe that the decision to cap "edge-out" ILECs' access rates at those charged by the ILEC in whose territory they are operating will impede the competitive environment originally intended to develop as a result of allowing the presence of "edge-out" operations (*Id.* at 3). Specifically, Small ILECs submit that the adopted rule will likely inhibit future competition as small ILECs considering operations outside their incumbent territories will have a lesser opportunity to recover the facilities cost (*Id.*).

(23) In response to the Small ILECs' contention that it would be difficult to administer different access rates for their incumbent and edge-out territories, as required by adopted Rule 4901:1-7-14(D), AT&T asserts that Small ILECs have not demonstrated that they cannot comply with the Commission's Order. AT&T notes that it maintained separate toll rate schedules for many years,

which assessed different terminating access rates in an exchange depending on where the originating exchange was located. (AT&T Memorandum Contra at 4). AT&T opines that there is s valid public policy goal of constraining access charges and treating edge-out carriers' access rates in a similar manner to those of CLECs and capping them at the host ILECs' rates (*Id.*).

(24) Verizon agrees with the Small ILECs' contention that the adopted rule creates implementation problems for carriers that operate in more than one ILEC's service territory. Therefore, Verizon advocates that, similar to the FCC, the Commission should allow Small ILECs to establish a blended access rate in order to address their stated concern (Verizon Memorandum Contra at 7, 8).

(25) In regard to adopted Rule 4901:1-7-14(D), One Communications asserts that the Commission erred by requiring CLECs to cap their intrastate access rates at the applicable ILEC's June 30, 2000, tariffed rates on file with the Commission without the ability to have higher rates if they are justified. Further, One Communications asserts that requiring CLECs to charge below cost access rates is unreasonable and will harm competition by preventing CLECs from recovering their costs. Additionally, One Communications contends that, through this rule, the Commission has changed its existing treatment of CLEC access rates while providing no explanation for this change or as to why CLECs are not entitled to recoup their costs to provide local access if they are higher than the ILEC's costs (One Communications Application for Rehearing at 4). One Communications avers that the requirement that CLECs match ILEC access rates, absent any mechanism by which CLECs can demonstrate that their costs exceed those rates, is a violation of a CLEC's due process rights (*Id.* at 6).

(26) In response to One Communication's application for rehearing relative to adopted Rule 4901:1-7-14(D), Verizon asserts that the application for rehearing should be rejected due to the fact that the Commission's rules already permit a carrier to seek a waiver of a specific rule or regulation by filing the appropriate motion pursuant to Rule 4901-1-12(A), O.A.C. (Verizon Memorandum Contra at 5). Additionally, Verizon submits that, notwithstanding the arguments presented by One Communications and the Small ILECs, costs should be recovered from the carrier's own end users, inasmuch as they are the cost

causers, and not from other carriers and those carriers' end users (*Id.* at 6, 7). Verizon points out that the price cap rule does not preclude carriers from recovering their costs but, rather, requires them to recover a more appropriate amount of their costs from end users and not from access customers that have no choice but to terminate interexchange traffic to the ILECs' customers (*Id.* at 7).

(27) In response to One Communications application for rehearing relative to adopted Rule 4901:1-7-14(D), AT&T asserts that it is appropriate for the Commission to further limit CLEC access charges by removing the option for CLECs to establish higher access rates than the host ILEC due the market structure for switched access, which results in the creation of a subsidy that flows from the state's toll market to the CLECs and their end users (AT&T Memorandum Contra at 5). In support of its position, AT&T references the fact that the FCC has established a market mechanism for the interstate jurisdiction that caps CLECs' tariffed interstate switched access rates in order to correct market failures caused by excessive CLEC access charges (*Id.* at 6 citing 47 C.F.R. 61.26). AT&T also notes that the FCC explicitly rejected a request that it permit higher-than-benchmark access rates for CLECs, even if they are cost justified (*Id.* at 8 citing *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* CC Docket No. 96-262, FCC 04-110 (released May 18, 2004), ¶57). Therefore, AT&T concludes that One Communications should not be allowed to do on the intrastate side what it has not been allowed to do on the interstate side (*Id.* at 9).

(28) While Verizon supports the Commission's decision, pursuant to adopted Rule 4901:1-7-14(D), to prohibit CLECs and certain ILECs and their affiliates from charging intrastate switched access rates that are higher than those of the ILECs in whose service area the CLEC operates, the company expresses concern with the requirements that carriers cap their rates "on a rate element basis" at the current rates of the ILEC. Specifically, Verizon believes that forcing CLECs to structure their access tariffs in the same manner as the ILEC and to mirror the ILEC's rates on a rate element basis is impractical, undermines the pro-competitive objective of the rate cap and offers no consumer benefits (Verizon Application for Rehearing at 4, 5).

Specifically, Verizon calls attention to the fact that requiring CLECs to cap their access rates "on a rate element basis" forces the carriers to adopt the same tariff structure and bill the exact same rate elements as the ILEC. Verizon asserts that there is no rational policy or economic basis for compelling newer carriers to copy the tariff structures previously developed by the ILECs. Additionally, Verizon points out that CLECs operating in more than one ILEC's serving area cannot feasibly mirror the rate elements of multiple ILECs with different rate structures (*Id.*). Therefore, Verizon opines that the current requirement will present a barrier to entry into new markets (*Id.* at 5).

Additionally, Verizon emphasizes that the composite rate, and not the individual rate components, is what is important for the purpose of ensuring fair and efficient competition. Verizon asserts that forcing all carriers into a uniform tariffing mold will have a stifling effect on innovation and service differentiation (*Id.* at 6). Verizon submits this requirement is unique to Ohio and is not required by the FCC or other states (*Id.* at 7). Therefore, Verizon identifies that, in Ohio, CLECs will have to undergo considerable expense to conform their existing billing systems in order to comply with the rule and produce bills that mirror the ILECs' historical rate structure (*Id.* at 8).

(29) The Commission finds that One Communications does not raise any new arguments for the Commission's consideration and, therefore, its application for rehearing with respect to adopted Rule 4901:1-7-14(D) is denied. We point out that the FCC rejected an identical argument raised by CLECs, concluding that CLECs remain free to recover from their end-users any higher costs that they incur in providing access services. The FCC requires a CLECs' tariffed switched access rates to not exceed the competing ILECs' switched access rates. The FCC also concluded that a CLEC's interstate switched access rates that are higher than the competing ILEC's interstate switched access rates have to be negotiated with interexchange carriers.[4] The same logic applies here. This Commission affords CLECs the maximum retail pricing flexibility; thus, they are free, through end-user charges, to recover any costs that the CLECs claim are not recovered by

4 *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers,* Eighth Report and Order And Fourth Order on Reconsideration, CC Docket No. 96-262. Release May 18, 2004, ¶¶57-58.

the capped switched access rates. Also, nothing in our rules prohibits CLECs from negotiating mutually agreed-upon higher access rates with interexchange carriers. Additionally, we point out that, as this Commission requires ILECs to mirror their interstate switched access rate on the intrastate side, the adopted rule would bring CLECs' intrastate switched access rates (now capped at the competing ILEC's current intrastate switched access rates) in line with the CLECs' interstate switched access rate (also capped at the competing ILEC's interstate switched access rates). This would simplify the billing complexity highlighted by Verizon's arguments.

Verizon's application for rehearing regarding the requirement to cap CLECs' intrastate switched access rates at the ILEC's intrastate switched access rates on a rate element basis is granted. The adopted rule requires a CLEC to cap its intrastate switched access rates at the competing ILEC's intrastate switched access rate, (i.e., not to exceed the ILECs' intrastate switched access rate). However, currently the Commission has been allowing CLECs to have tariffed a blended per-minute rate as long as it does not exceed the ILEC's per-minute rate, as of June 30, 2000. Also, the Commission has been allowing CLECs operating in more than one ILEC service area to have a single per-minute switched access rate that does not exceed the lowest ILEC per-minute switched access rate. It is our experience that some CLECs take advantage of the ability to have a single blended rate, while others choose to have tariffed individual rate elements. It is not the Commission's intention to change such policy. Therefore, in order to maintain that same level of flexibility, we shall revise adopted Rule 4901:1-7-14(D), by removing the phrase "on a rate element basis." All the CLECs and ILECs operating outside their traditional service area will have the responsibility to demonstrate to the Commission's satisfaction that a blended per-minute intrastate switched access rate complies with the rate cap requirement.

The Small ILECs' application for rehearing of the requirement that an "edge-out" ILEC cap its intrastate switched access rates in its "edge-out" service area to that of the competing ILEC's intrastate switched access rates pursuant to a phase-in over a three-year period is denied. In reaching this conclusion, the Commission finds that the Small ILECs' filing does not provide sufficient information regarding the alleged administrative and technical issues to justify a change in the Commission's Opinion and Order. The Commission notes that while Small ILECs are still required to comply with adopted Rule 4901:1-7-14(D) and the three-year transition period articulated in our Opinion and Order, nothing prohibits a small ILEC with edge-out authority from filing a waiver seeking relief from adopted Rule 4901:1-7-14(D) upon a detailed demonstration that it is economically and or technically infeasible to comply with this rule; and by further demonstrating how this rule is inconsistent with its current "edge-out" authority.

(30) In regard to paragraph (C) and (D) of adopted Rule 4901:1-7-22, AT&T asserts that, while it is not advocating true parity, it does advocate that recognized industry standards, including those related to migration timelines, should apply to all LECs. If the Commission does not adopt specific targets on rehearing, AT&T recommends that paragraph (C) and (D) of adopted Rule 4901:1-7-22 be clarified in the following rule provision:

> All telephone companies responding to local requests and in carrying out all aspects of customer migration including, but not limited to number porting, shall follow applicable federal law and rules and industry standards and timelines.

(AT&T Application for Rehearing at 16).

(31) Verizon objects to AT&T's application for rehearing with respect to this issue inasmuch as the specific LEC targets for customer migration which AT&T has proposed were already properly considered and rejected by the Commission. Regarding AT&T's proposed language requiring that all telephone companies responding to customer migration requests should follow applicable federal law and industry standards, Verizon asserts that the Commission has already determined that the rule at issue only applies to CLECs, and not ILECs. Further, Verizon states that paragraphs (C) and (D) of adopted Rule 4901:1-7-22 already require that CLECs be held to industry standards for customer migrations (Verizon Memorandum Contra at 8, 9).

(32) In regard to AT&T's request for rehearing regarding the issue of adopting specific standards to apply to CLECs for migrating customers away from the CLECs, the Commission finds that AT&T fails to raise any new arguments for our consideration.

Therefore, AT&T's application for rehearing with respect to this issue is denied. We also find that, as Verizon points out, paragraphs (C) and (D) of adopted Rule 4901:1-7-22 already satisfy the concerns that AT&T is attempting to address in its proposed alternative language.

(33) With respect to adopted Rule 4901:1-7-22(G), O.A.C., One Communications contends that there is no purpose for a rule requiring that no acquiring company may require or advise a new customer to use another carrier's service on an interim or transitional basis without the consent of such other carrier. In support of its position, One Communications submits that the rule is not necessary to protect the interests of consumers. Additionally, One Communications argues that the rule also violates the First Amendment rights of carriers by prohibiting their ability to suggest to customers that they obtain the services of another carrier, for some period of time, without the other carrier's consent. One Communications opines that there is no demonstration that there is a substantial government interest to prohibit such conduct or that the regulation is not more extensive than necessary in order to serve that interest. Finally, One Communications avers that there was no discussion of this issue in either the opinion and order establishing the rules or the entry which delineated the proposed rules (One Communications Application for Rehearing at 6, 7).

(34) AT&T avers that One Communications' application for rehearing with this rule should be denied inasmuch as there are legitimate public policy reasons for the rule. Specifically, AT&T asserts that the rule addresses the practice engaged in by some CLECs that, lacking facilities to serve a customer, suggest that the customer order service from the ILEC and then cancel their service once facilities are in place (AT&T Memorandum Contra at 16, 17).

(35) The Commission finds that One Communications' application for rehearing on this issue is denied. We disagree with One Communications' statement that it is clear that this rule is not necessary to protect the interests of consumers and that the interest of a third-party carrier does not appear to be adversely affected in the absence of this rule. The example cited by One Communications suggesting that it is perfectly acceptable for it to recommend to a customer to obtain service from another telephone company while it modifies its network is a prime

example of problems that adopted Rule 4901:1-7-22(G) is designed to avoid. In this example, the third-party telephone company expends time and resources in order to modify its network so it can provide service to that customer. This investment will occur without the third-party knowledge that there will not be an opportunity to recoup its investment from that customer when he/she migrates to One Communications. Also, if the customer in this example obtains the requested service via a tariffed term contract, it may be required to pay early termination charges before it can migrate to One Communications and, thus, incur additional costs. Additionally, the adopted rule discourages illegitimate practices such as the one described by AT&T (AT&T Memorandum Contra at 16, 17). Therefore, we find that this rule is consistent with the Commission's policy for protecting the public interest.

(36) In regard to adopted Rule 4901:1-7-24(A), AT&T submits that the Commission erred by failing to revise the proposed rule for the purpose of eliminating the provision reflecting that telephone companies do not have a proprietary interest in customer's telephone number. In support of its position, AT&T reiterates its earlier arguments that the provision is contrary to the FCC's rules, Commission-approved tariff language, and long-standing industry practice (AT&T Application for Rehearing at 16 citing AT&T Initial Comments at 19). AT&T again avers that the Commission should remove the first sentence of the rule in order to avoid confusion and unnecessary litigation over alleged rights to specific telephone numbers. AT&T opines that it is sufficient to simply recognize that customers must have the ability to retain the same telephone number as they change from one telephone company to another at the same location (*Id.* at 17).

(37) With respect to adopted Rule 4901:1-7-24(A), AT&T has failed to raise any new arguments for the Commission's consideration. Therefore, AT&T's application for rehearing is denied. In reaching this determination, the Commission notes AT&T has failed to demonstrate the harm resulting from the inclusion of adopted Rule 4901:1-7-24(A), especially in light of the fact that adopted Rule 4901:1-7-24(B) incorporates 47 C.F.R. 52.23(a)(6), which similarly states that a carrier does not have a proprietary interest in a customer's telephone number.

(38) Specific to adopted Rule 4901:1-7-26(A)(1)(a)(ii), Verizon posits that the Commission incorrectly identified referenced 47 U.S.C. 222(f)(3). Instead, Verizon believes that the correct reference should have been 47 U.S.C. 222(h)(3) (Verizon Application for Rehearing at 10).

(39) We agree with Verizon that the reference to 47 U.S.C. 222(f)(3) in Rule 4901:1-7-26(A)(1)(a)(ii) was in error and should be revised to reflect 47 U.S.C. 222(h)(3). Additionally, the Commission notes that the reference to 47 U.S.C. 222(f)(1) in adopted Rule 4901:1-7-26(A)(1)(a)(i) was in error and should be revised to reflect 47 U.S.C. 222(h)(1).

(40) Regarding adopted Rule 4901:1-7-29, AT&T requests that the Commission reconsider its decision not to time-limit the potential stay of a defaulting carrier's services. In support of its position that there should be no interminable delays in disconnection, AT&T references the fact that pursuant to 47 U.S.C. 214, a carrier can automatically cease providing the identified services on the 31st day following publication by the FCC. AT&T notes that, to the extent that the FCC finds merit in any filed objections, disconnection will still be allowed relative to all end users except with respect to those end users who objected and whose objections were deemed meritorious. Therefore, to the extent that a stay is necessary, AT&T recommends that, similar to 47 U.S.C. 214, it should not exceed 30 days (AT&T Application for Rehearing at 17, 18).

(41) Similar to the arguments raised by AT&T regarding adopted Rule 4901:1-7-29, One Communications points out that an indefinite stay of the disconnection of defaulting carriers will result in wholesale carriers having difficulty in recovering their costs for continued provision of service. One Communications opines that such a result could restrict the availability of wholesale services to competitive carriers, ultimately leading to the detriment of consumers in Ohio as a result of the potential presence of fewer carriers in the market. In order to avoid this consequence, One Communications recommends that the Commission should delete this rule or impose a limit of no longer than 30 days during which a wholesale provider should be required to serve a defaulting LEC. At the very least, One Communications recommends that the Commission should require defaulting LECs to pay the owed amounts into an escrow account while the

Commission performs its investigation (One Communications Application for Rehearing at 8, 9).

(42) The Commission finds that AT&T and One Communications fail to raise any new arguments for the Commission's consideration. Accordingly, AT&T's and One Communications' applications for rehearing on this issue is denied.

(43) Finally, AT&T requests that the Commission clarify the impact of its reference to federal law and the FCC's rules. While recognizing that the Commission is constrained by Ohio law regarding agency rulemaking, AT&T requests on rehearing that the Commission clarify that, to the extent that its rules conflict with federal law or rules, the later prevail over the former. Alternatively, AT&T requests that carriers be permitted to seek waivers of state rules where they are in conflict with newly amended federal rules and that the waivers be granted automatically as of the date of the federal rule change (AT&T Application for Rehearing at 18, 19).

(44) OCC opposes AT&T's motion for clarification. In support of its position, OCC notes that the Commission, in its Opinion and Order of December 6, 2006, in Case No. 06-685-AU-ORD, *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9,* determined that future motions for clarification will be denied. OCC also notes that AT&T does not allege that a lack of clarification regarding federal preemption would be either unreasonable or unlawful (OCC Memorandum Contra at 6, 7). OCC asserts that the issue of when there is a conflict and when there is preemption are not easily determined (*Id.*). While AT&T relies on Section 4905.041, Revised Code, OCC responds that the statute only limits the Commission authority with respect to specific matters and does not set forth a blanket preemption.

OCC highlights the fact that adopted Rule 4901:1-7-02(C)-(E) currently provides the capability for carriers to seek waivers when they believe that a new federal rule preempts one of the Commission's rules. However, in response to AT&T's alternative request that all waiver requests be granted automatically as of the date of the federal rule change, OCC believes that the request should be denied inasmuch as AT&T's position would allow telephone companies to unilaterally decide when preemption applies, thus, abdicating the Commission's jurisdiction to ensure reasonable rates and adequate service for Ohioans (*Id.* at 8).

(45) In regard to AT&T's request for clarification, the Commission recognizes the concerns expressed by the company regarding the potential inconsistency between the Commission's rules and a subsequently revised FCC rule. At the same time, the Commission agrees with OCC's position specific to allowing telephone companies with the unilateral ability to decide when a preemption applies. In response to any amendments to a FCC rule currently incorporated in the carrier-to-carrier rules, the Commission will certainly strive to amend its rules in a timely manner. To the extent that a telephone company is concerned about its compliance status relative to an impacted rule, the carrier may file a waiver consistent with adopted Rule 4901:1-7-02. Such waiver requests will not be considered automatically approved, but will be considered on their own individual merits.

(46) The Commission notes that adopted Rule 4901:1-7-02(C) provides that "[t]he Commission may, upon its own motion or for good cause shown, waive any requirement, standard, or rate set forth in this chapter. On its own motion, the Commission now determines that this provision should be amended to simply reflect that "[t]he Commission may, for good cause shown, waive any requirement, standard, or rule set forth in this chapter."

It is, therefore,

ORDERED, That the applications for rehearing are granted, in part, and denied, in part, consistent with the above findings. It is, further,

ORDERED, That to the extent not specifically addressed, all other arguments raised on rehearing are denied. It is, further,

ORDERED, That Rules 4901:1-7-02, 4901:1-7-03, 4901:1-7-14, and 4901:1-7-26 are amended consistent with the above findings. It is, further,

ORDERED, That copies of the amended rules, as set forth in the appendix to this entry on rehearing be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State in accordance with divisions (D) and (E) of Sections 111.15, Revised Code. It is, further, ORDERED, That the OCC's motion to strike is granted in accordance with Finding (6). It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all telephone companies, parties, and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

JSA:ct

Entered in the Journal

OCT 1 7 2007

Reneé J. Jenkins
Secretary

*** DRAFT – NOT FOR FILING ***

4901:1-7-02 **General applicability.**

(A) Each citation contained within this chapter that is made to either a section of the United States code or to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter as effective on August 22, 2007.

(B) The 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 in paragraph (A) of this rule.

(C) The commission may for good cause shown, waive any requirement, standard, or rule set forth in this chapter.

(D) Any telephone company seeking a waiver(s) of rules contained in this chapter shall specify the period of time for which it seeks such a waiver(s), and a detailed justification in the form of a motion filed in accordance with rule 4901-1-12 of the Administrative Code.

(E) All waiver requests must be approved by the commission and will toll any automatic approval time frames set forth in Rule 4901:1-6-08 of the Administrative Code.

*** DRAFT – NOT FOR FILING ***

4901:1-7-03 **Toll presubscription.**

(A) All local exchange carriers (LEC) shall charge intrastate intraLATA toll providers or customers no more than five dollars and fifty cents for a manual, local presubscribed interexchange carrier (LPIC) change or no more than one dollar and twenty-five cents for an electronic LPIC change, except when a LEC establishes a company-specific, cost-based, intrastate LPIC rate, as discussed in paragraph (G) of this rule.

Whenever a LEC charges an intrastate intraLATA toll provider for changing a customer's LPIC, such LEC may not charge the customer making the request for the same LPIC change.

An intrastate intraLATA toll provider who is charged by the LEC providing presubscription for changing a customer's LPIC, may pass through to that customer no more than what it has been charged by such LEC.

(B) Charges other than the permitted LPIC change charge are explicitly prohibited from applying to any LPIC change.

(C) When a customer switches both the customer's interLATA presubscribed interexchange carrier (PIC) and LPIC at the same time, the LEC providing presubscription shall waive one-half of the applicable LPIC change charge without regard to whether the change was performed through manual or electronic means. This requirement to waive one-half of the applicable LPIC change charge does not apply when company-specific, cost-supported charges that account for the efficiencies of changing the customer's interLATA PIC and LPIC at the same time have been approved pursuant to paragraph (G) of this rule.

(D) When an intrastate intraLATA toll provider electronically submits to a LEC a request to change a customer's LPIC, the LEC shall treat the LPIC change as an electronic LPIC change for customer billing purposes, regardless of any manual process that may be required or involved in carrying out the change.

(E) Paragraphs (A) to (D) of this rule also apply when the subscriber explicitly chooses no intrastate intraLATA toll carrier (NoLPIC).

(F) A new customer shall be permitted to make an initial LPIC selection, which may include choosing NoLPIC, free of charge at the time the customer initiates local service. If the customer is unable to make a selection at the time of initiation of local service, the ILEC offering presubscription shall read a random listing of all available toll providers to aid in the customer's selection. If, after being read the list of all available toll providers, the customer still does not make an LPIC selection, the ILEC shall inform the customer that unless a selection is made by the customer at the time local service is initiated, the LEC will, as a default, place the customer in a

NoLPIC status. The requirement to read a random listing of all available toll providers does not apply to CLECs, AT&T Ohio, and Verizon North Incorporated.

The LEC shall further inform the customer that until such time as the customer informs the LEC of the customer's LPIC selection, the customer will not have an intrastate intraLATA toll provider and, as a result, will be required to dial a carrier access code to route an intrastate intraLATA toll call to the carrier of the customer's choice or make other arrangements. A customer making an LPIC selection after the time of local service initiation may be assessed an LPIC change charge subject to paragraphs (A) to (D) of this rule.

(G) A LEC demonstrating through a submitted cost study that the LPIC rates identified in paragraph (A) of this rule do not recover the costs incurred shall be permitted to file company-specific rates through the filing of a UNC case.

(H) Any LEC that has previously relied upon cost support to establish its tariffed LPIC change charge when such charge is below the safe harbor rates set forth in this rule and in effect as of the effective date of this rule may not increase its LPIC change charge without first providing cost support justifying the increase.

*** DRAFT – NOT FOR FILING ***

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" (nonrural ILEC)" shall mean an incumbent local exchange carrier that is not a "rural telephone company" under 47 U.S.C. 153(37), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(2) "Rural competitive local exchange carrier" (rural CLEC)" shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any customers 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 incumbent local exchange carrier (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 until the commission rules otherwise. Any change in the ILEC intrastate switched access tariffs shall be filed as an ATA case and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-08 of the Administrative Code.

(C) When filing for certification under rule 4901:1-6-10 of the Administrative Code, facilities-based competitive local exchange carriers (CLEC) 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.

(D) A facilities-based CLEC, an ILEC's affiliate holding a CLEC certification, or an ILEC operating outside its ILEC service area, shall cap their rates, 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 the CLEC is a rural CLEC competing with a nonrural ILEC and its rates are capped at national exchange carrier association access rates.

(E) A 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 of the Administrative Code, shall be filed as an ATA case and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-08 of the Administrative Code.

*** DRAFT – NOT FOR FILING ***

4901:1-7-26 **Competition safeguards.**

(A) Code of conduct

(1) Disclosure of information

(a) Definitions

(i) For the purpose of this rule, "customer proprietary network information" (CPNI) shall be defined in accordance with 47 U.S.C. 222(h)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(ii) For the purpose of this rule, "subscriber list information" shall be defined in accordance with 47 U.S.C. 222(h)(3), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(b) Customer proprietary network information (CPNI)

(i) The use of CPNI by any telephone company must comply with 47 U.S.C. 222, and 47 C.F.R. 64.2001 to 64.2009, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(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) 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, upon request, 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) Records

*** DRAFT – NOT FOR FILING ***

All telephone companies shall maintain information, consistent with federal communications commission (FCC) requirements, to enable the commission to determine whether they have satisfied paragraph (A) of this rule.

(B) Separate accounting

(1) Each incumbent local exchange carrier (ILEC) shall maintain its books, records, and accounts in accordance with the FCC's accounting requirements, as appropriate to the categorization of the ILEC, and as revised from time to time.

(2) Unless otherwise directed by the commission, all ILECs shall follow class B uniform system of accounts for annual reporting purposes.

(C) Financial arrangements

The financial arrangements of an ILEC are subject to section 4905.40 of the Revised Code, except as the commission may otherwise approve.