FILE

9

RECEIVED-DOCKETING DIV
2007 NOV 16 PM 1:17
PUCO

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of	:	
Carrier-to-Carrier Rules	:	**CASE NO. 06-1344-TP-ORD**
	:	

APPLICATION FOR REHEARING
OF THE
OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

Pursuant to § 4903.10 Revised Code and Rule 4901-1-35 of the Ohio Administrative Code, the Ohio Cable Telecommunications Association (the "Association" or the "OCTA") submits this Application for Rehearing to the October 17, 2007 Entry on Rehearing in this matter. The OCTA, a trade association of cable telecommunication operators located throughout Ohio, filed Initial Comments on January 5, 2007 and Reply Comments on February 23, 2007. The OCTA also filed a Memorandum Contra to address the first ground for rehearing contained in AT&T Ohio's September 21, 2007 Application for Rehearing relating to Rule 4901:1-7-13 and the obligation of an ILEC to provide transit service and the rates for such service being based on TELRIC.

The Association alleges that the Commission's October 17, 2007 Entry on Rehearing is unreasonable and unlawful because it did not go far enough in clarifying Rule 4901:1-7-14(D). Specifically, the OCTA alleges that the rule did not expressly recognize and affirm the concept of blended rates and further, that the Entry on Rehearing at page 18 imposes a condition on those who employ blended rates that is a

mathematical impossibility that should be retracted. The following sentence should be added to subsection D of the rule:

> However, nothing in this rule prohibits a facilities-based CLEC, an ILEC's affiliate holding a CLEC certification, or an ILEC operating outside its ILEC service area from offering blended rates where there is a different rate element structure than what is contained in the ILEC's rate structure and under a weighted composite blended rate where the rate is higher than the lowest ILEC per minute switched access rate but lower than the highest ILEC per minute switched access rate.

The basis for this Application for Rehearing is set forth in the accompanying Memorandum in Support.

WHEREFORE, the Association respectfully requests that the Commission grant rehearing and add the clarifying sentence set forth above to Rule 4901:1-7-14(D) of the Ohio Administrative Code.

Respectfully submitted,

By: Stephen M. Howard
Stephen M. Howard

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5401
Fax: (614) 719-4772
E-mail: smhoward@vorys.com

Attorneys for the Ohio Cable
Telecommunications Association

MEMORANDUM IN SUPPORT

At page 18 of its October 17, 2007 Entry on Rehearing, the Commission stated the following:

> Verizon's application for rehearing regarding the requirement to cap CLEC's 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 OCTA agrees that the October 17, 2007 Entry improved the rule by removing the phrase "on a rate element basis." However, the rule itself did not go far enough in recognizing and affirming the concept of blended rates and the Entry on Rehearing created confusion when it stated that the blended per-minute access rate the CLEC can charge when it operates in several ILEC service areas "does not exceed the lowest ILEC per-minute switched access rate." This latter phrase presents a mathematical impossibility in that by definition a blended rate must be higher than the

lowest ILEC per-minute switched access rate. This creates a confusion which must be corrected.

ARGUMENT:

A. The rule does not expressly recognize and affirm the concept of blended rates and should be supplemented accordingly.

The language contained in subsection D of Rule 4901:1-7-14 now resolves any concerns relating to having to match ILEC rate elements. However, this language does not specifically address the question of "blended rates" when a CLEC operates in more than one ILEC service area. The rule, as it stands now, could be interpreted to require CLEC rates to be capped (without regard to the rate element billed) at the individual ILEC rates for each service area in which the ILEC operates. While the Commission in its October 17, 2007 Entry on Rehearing discussed the need for blended rates where a CLEC operates in more than one ILEC service area, the rule is silent. The rule should be supplemented to expressly recognize and affirm that the concept of blended rates is permissible, especially where a CLEC operates in two or more ILEC service areas.

B. The rule should be supplemented to recognize that a blended rate may exist either under a different rate element structure than the ILEC or under a weighted composite blended rate approach; the language in the Entry that such a weighted composite rate "does not exceed the lowest ILEC per-minute switched access rate" should be eliminated as it is a mathematical impossibility.

The concept of "blended rates" contains at least two forms. First, a CLEC may charge a "blended rate" under a different rate element structure than the ILEC so long as the per-minute rate does not exceed the ILEC's per-minute rate. However, if the

current or future ILEC per-minute rate exceeds the June 30, 2000 rate, then CLECs are not permitted to charge as high of a rate as an ILEC. To illustrate, recently in the 2007 Annual FCC Price Cap Filing of AT&T Ohio, AT&T Ohio increased a number of per-minute of use rate elements. While these per-minute of use rate elements may still be below the June 30, 2000 rates, there is no assurance that this or future increases would not exceed those rates. The Commission's automatic mirroring process would appear to place a bias that this could happen.

On the other hand, some CLECs use a "blended rate" in which some weighted composite of several ILEC rate elements are used. Using a weighted composite approach based on current ILEC rates introduces additional difficulty in capping CLEC rates at the ILEC rates in effect on June 30, 2000.

As quoted above from page 18, the Commission stated on rehearing that "It is not the Commission's intention to change such policy." However, this statement leaves uncertainty around what the unblended or blended CLEC per-minute rate caps will be, no matter which of the blended rate forms are used.

In addition, the Commission includes a phrase on page 18 which seems to contradict the use of the "blended rate" concept. The Commission stated that ". . . the Commission has been allowing CLECs operating in more than one service area to have a single per-minute switched access rate that does not exceed the lowest ILEC per-minute switched access rate. This latter phase is a mathematical impossibility. If a CLEC is operating in more than one ILEC service area, there will be at least two sets of access rates. Unless both sets are identical, one of them will be the higher rate and the other will

be the lower rate. A blending is an averaging of the two rates and will require that the blended rate mathematically be higher than the lower ILEC rate but lower than the higher ILEC. Likewise, in the case of three ILEC service areas, the blended rate will be an average which will be always higher than the lowest ILEC per-minute rate, but lower than the highest ILEC per-minute rate.

The Commission should retract the statement on page 18 that CLECs operating in more than one ILEC service area must have a single per-minute switched access rate that does not exceed the lowest ILEC per-minute switched access rate.

CONCLUSION

The Commission's October 17, 2007 Entry on Rehearing improved subsection (D) of Rule 4901:1-7-14 of the Ohio Administrative Code. However, the rule, as it stands now, is still unreasonable and unlawful. Rehearing should be granted. The rule should be supplemented to recognize the concept of blended rates, that blended rates can either mean a rate charged under a different rate element structure than the ILEC or a weighted composite rate approach, and that under the weighted composite rate approach, the blended rate cannot exceed the highest ILEC per-minute switched access rate but will be higher than the lowest ILEC per-minute switched access rate. Rule 4901:1-7-14(D) should have the following sentence added:

> However, nothing in this rule prohibits a facilities-based CLEC, an ILEC's affiliate holding a CLEC certification, or an ILEC operating outside its ILEC service area from offering blended rates where there is a different rate element structure than what is contained in the ILEC's rate structure and under a weighted composite blended rate where the rate is higher than the lowest ILEC per minute switched access

rate but lower than the highest ILEC per minute switched access rate.

Respectfully submitted,

By: Stephen M. Howard
Stephen M. Howard

VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
(614) 464-5401
Fax: (614) 719-4772
E-mail: smhoward@vorys.com

Attorneys for the Ohio Cable
Telecommunications Association

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Application for Rehearing of the Ohio Cable Telecommunications Association was served by first class U.S. mail, postage prepaid and, where indicated, by electronic mail on the following persons this 16th day of November, 2007:

Todd M. Rodgers
Chester Wilcox & Saxbe
65 E. State, Suite 1000
Columbus, OH 43215
trodgers@cwslaw.com

Douglas E. Hart
441 Vine Street
Suite 3108
Cincinnati, OH 45202
dhart@douglasehart.com

Sally W. Bloomfield
Thomas J. O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
sbloomfield@bricker.com
tobrien@bricker.com

Mary Ryan Fenlon
Jon F. Kelly
AT&T
150 E. Gay Street, Room 4-A
Columbus, OH 43215
Mf1842@att.com
Jk2961@att.com

David C. Bergmann
Office of Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215-3485
Bergmann@occ.state.oh.us

David A. Turano
Shoemaker, Howarth & Taylor, LLP
471 E. Broad St., Suite 2001
Columbus, OH 43215
dturano@midohiolaw.com

Thomas E. Lodge
Thompson Hine LLP
10 W. Broad St., Suite 700
Columbus, OH 43215-3435
Tom.lodge@thompsonhine.com

Carolyn S. Flahive
Thompson Hine LLP
10 W. Broad St., Suite 700
Columbus, OH 43215-3435
Carolyn.flahive@thompsonhine.com

Joseph R. Stewart
Embarq
50 W. Broad St.
Suite 3600
Columbus, OH 43215-5918
Josepher.stewart@sprint.com

Michael W. Fleming
Brian McDermott
Williams Mullen
8270 Greensboro Drive
McLean, VA 22102

R. Edward Price
One Communications Corp.
100 Chestnut Street, Suite 600
Rochester, NY 14604
tprice@onecommunications.com

Patricia Rupich
Cincinnati Bell
201 E. Fourth Street
Cincinnati, OH 45201-2301

Mrs. Nancy Leigh Jacobson
One Communications
24 Albion Road, Suite 230
Lincoln, RI 02865
njacobson@onecommunications.com

Stephen M. Howard