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BEFORE

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THE PUBLIC UTILITIES COMMISSION OF OHIO

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

AT&T'S MEMORANDUM CONTRA

Introduction

AT&T[1], by its attorneys and pursuant to Ohio Admin. Code § 4901-1-35(B), opposes the application for rehearing filed by the Ohio Cable Telecommunications Association ("OCTA") on November 16, 2007. OCTA seeks relief, in the form of "clarification" of the October 17, 2007 Entry on Rehearing, that involves a substantive policy issue that it should have raised in the initial round of rehearing applications filed on September 21, 2007. It cannot now properly raise that substantive policy issue and assert that it involves a mere "clarification" of an issue that was timely raised by Verizon and that was addressed in the Entry on Rehearing. Even if it is considered timely, OCTA's application for rehearing should be denied on the merits, for the reasons that follow.

OCTA Seeks A Significant Policy Change, Not Simply A Clarification

OCTA seeks further rehearing on the issue of "blended" access rates. In its application for rehearing filed on September 21, 2007, Verizon asked the Commission to remove the requirement that carriers cap their rates *on a rate element basis* at the current rates of the

[1] For purposes of this case, AT&T includes The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, Inc., SBC Long Distance, LLC d/b/a AT&T Long Distance, and their wireless affiliates that operate in Ohio.

ILEC in a given area. Entry on Rehearing, October 17, 2007, p. 16. The Commission addressed this issue in Verizon's favor, removing the "on a rate element basis" language from the revised rule. Verizon sought rehearing on this point because CLECs and the ILEC whose access rates serve as the cap may have different rate structures. Verizon asked that ILEC rate structures need not be replicated by the CLECs so long as the composite rate cap levels are not exceeded. The Commission granted the relief sought by Verizon and modified the rule accordingly.

OCTA now claims the Commission "did not go far enough in clarifying Rule 4901:1-7-14(D)." OCTA, p. 1. But OCTA is actually asking for a significant policy change - - not a simple clarification - - of the rule in question. Verizon did not request, and the Commission did not grant, permission to "blend" the rates of the various ILECs in order to arrive at the appropriate cap for CLEC rates. Rather, as the Commission explained, "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." OCTA, p. 3, quoting Entry on Rehearing, October 17, 2007, at p. 18.

The Commission was not asked to permit, and did not permit, the blending of rates between two or more ILECs. Rather, it reiterated its existing policy that a CLEC can charge a unified rate across the state but that rate is capped at the lowest ILEC rate. The Commission stated:

> 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 not the Commission's intention to change such policy.

Entry on Rehearing, October 17, 2007, p. 18. OCTA now advocates just such a policy change.

The FCC and now this Commission have noted that if capped rates are not compensatory, CLECs can make up the difference by charging their own end users. As the Commission explained in rejecting One Communications' application for rehearing, "We point out 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 service." Entry on Rehearing, October 17, 2007, p. 17.

OCTA wants to depart from the lowest rate concept and have the ability to blend access rates across ILEC territories, a policy the Commission has wisely rejected before and should reject again.

The Commission's Policy Limiting CLEC Access Charges Is Appropriate

As AT&T noted in its memorandum contra filed on October 1, 2007, this Commission, as well as the FCC, has recognized that CLEC access charge levels can be problematic. AT&T pointed out that the FCC established a market mechanism for the interstate jurisdiction that caps CLECs' tariffed interstate switched access rates.[2] The FCC's mechanism uses the switched access rate of the ILEC which otherwise could be the end user's local exchange carrier as an administratively simple, bright line benchmark for determining the reasonableness

[2] See 47 CFR § 61.26.

of CLEC interstate rates. A rate below the benchmark can be reasonable, and a rate above the benchmark is not reasonable.

The FCC also explicitly rejected a request that it permit higher-than-benchmark access rates to be imposed by CLECs if they were cost-justified. TDS Metrocom, Inc. ("TDS") petitioned the FCC to modify its decision and permit a cost-based rate that exceeds the interstate switched access rate of the competing ILEC.[3] The FCC rejected TDS' requests by stating:

> We reject TDS's requests that we impose a negotiation or arbitration requirement on IXCs and permit competitive LECs to tariff rates above the benchmark if cost-justified. Both of TDS's requests assume incorrectly that the Commission adopted a cost-based approach to competitive LEC access charges in its CLEC Access Reform Order. The Commission explicitly declined to apply this sort of regulation to competitive LECs and explained that it was applying a market-based approach. Consistent with this finding, the Commission held that it will assess the reasonableness of competitive LEC access rates by evaluating market factors rather than a particular carrier's costs. The requests by TDS would involve an examination of carrier costs rather than market data to determine competitive LEC access rates. Because such an examination would be contrary to the Commission's market-based approach to competitive LEC access charges, we must reject TDS's requests.[4]

In its September 21, 2007 application for rehearing, Verizon stated that Rule 4901:1-7-14(D), as adopted, was unreasonable and burdensome to implement as it would require the imposition of a new rate structure on certain carriers and result in significant system changes. Verizon's Application for Rehearing, pp. 1, 4. Notably, Verizon supported the Commission policy decision to prohibit CLECs and certain ILECs and their affiliates from charging intrastate switched access rates that are higher than the ILEC in whose service area the CLEC operates. Id., p. 4. But Verizon expressed concern about one aspect of the rule adopted to carry out this policy. This was requirement to cap the rates "on a rate element basis." Id., pp. 4-5. Verizon

[3] *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) (CLEC Access Reconsideration Order).
[4] CLEC Access Reconsideration Order, ¶ 57 (footnotes omitted).

argued that this limitation would force new carriers to copy the access rate structures of the ILECs, not just to cap their rates. Id., p. 5. Verizon argued that CLECs cannot feasibly mirror the rate structures of multiple ILECs in whose areas they operate. Id.

AT&T supported Verizon's proposal. It noted that because not all carriers have similar access rate structures, it is appropriate to look at the composite, per-minute rate, including all applicable rate elements, for comparison purposes. AT&T pointed out that, under the FCC rules, the rate for interstate switched access services means the *composite*, per-minute rate for the services associated with eight rate elements, including all applicable fixed and traffic-sensitive charges. These rate elements are (1) carrier common line (originating), (2) carrier common line (terminating), (3) local end office switching, (4) interconnection charge, (5) information surcharge, (6) tandem switched transport termination (fixed), (7) tandem switched transport facility (per mile), and (8) tandem switching.[5] Thus, the FCC rule recognizes the "composite rate," and not the individual rate elements, as appropriate for application of the benchmark. The Commission acted appropriately in granting Verizon's application for rehearing. It would upset the important policy that caps CLEC access rates at ILEC levels if it were to now grant OCTA's application for rehearing.

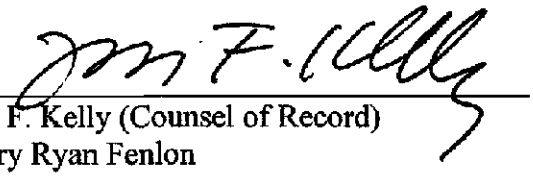
Conclusion

For all of the foregoing reasons, OCTA's application for rehearing should be denied.

[5] See 47 C.F.R. § Part 61.26(a)(3) and (5).

Respectfully submitted,

AT&T

By: 

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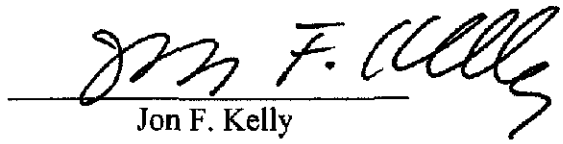
Certificate of Service

I hereby certify that a copy of the foregoing has been served this 26th day of November, 2007, by first class mail, postage prepaid, on the parties shown below.



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