BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Review of	)	
Chapter 4901:1-3 of the	)	Case No. 08-539-TP-ORD
Ohio Administrative Code.	)	

INITIAL COMMENTS OF AT&T OHIO

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1. Introduction

AT&T Ohio[1], by its attorneys, submits these initial comments in response to the Staff's proposed revisions to Chapter 4901:1-3 of the Ohio Administrative Code. The Staff's recommendations consist of modest revisions to rules that require major surgery. While AT&T Ohio agrees with the Staff that several of the rules should be rescinded, the Staff's recommendations regarding the remaining rules do not go far enough and will not carry out the Governor's Executive Order on "Implementing Common Sense Business Regulation," cited in the Commission's May 7, 2008 Entry.

It is fair to question whether most of the proposed rules in this chapter of the Administrative Code are necessary or appropriate. The Commission should approach each of the proposed rules with that issue in mind: Is this rule necessary and appropriate in today's competitive environment? A rule is not necessary where current industry practices are reasonable and a rule may limit flexibility that is otherwise present. A rule is not be appropriate if it simply repeats the language of an existing federal rule, as that could result in unintended consequences. A rule is not appropriate if it cannot be enforced uniformly upon all competitors. In reviewing the proposed rules, the Commission must also consider that regulation was developed as a substitute, or surrogate, for competition. Because vibrant competition for telecommunications services is now well-established, fewer rules should be necessary and any proposal to impose new

[1] The Ohio Bell Telephone Company uses the name AT&T Ohio.

rules must be closely scrutinized. The Staff proposal contains some rules that are not necessary, some that are not appropriate, and some that do not meet any of these tests. AT&T Ohio's comments on the Staff's specific proposals follow.

2. Uniform System of Accounts

The Staff proposes to renumber and edit the existing rule, Ohio Admin. Code § 4901:1-3-01. AT&T Ohio questions the need for this rule. Given the fact that Division (A) of this rule reiterates the FCC requirements, it should be rescinded in its entirety. There is simply no need to repeat or attempt to restate any rule or requirement of the FCC in a state-adopted rule. Carriers are required to follow the applicable requirements of the FCC and there is no need to repeat an FCC rule in the Ohio Administrative Code.

The Commission's experience last year in the competitive retail service and in the carrier-to-carrier rules dockets shows that attempting to duplicate FCC rules in rules in Ohio is cumbersome and invites inconsistencies. As the Commission has recognized, " . . . Section 121.75, Revised Code, requires that, in lieu of the text of referenced rules or statutes, an applicable rule or statute can be referenced provided that the reference identifies the *specific date* of the version that is being incorporated." In the Matter of the Establishment of Carrier-to-Carrier Rules, Case No. 06-1344-TP-ORD, Opinion and Order, August 22, 2007, p. 8 (emphasis added). This means that the state rules must be amended every time a referenced federal rule changes, a cumbersome process.

Division (B) of the proposed rule is also unnecessary. The Commission need not "reserve the right" to do anything in a rule; if it has the right, it can exercise it. This surplus language is neither necessary nor appropriate. As to the added provision in Division (C) that CLECs and CTS providers are subject to GAAP, that has been made clear in those carriers' certification orders. For a rule to say that again is simply unnecessary. Based on these facts, the Commission should rescind the existing rule on the USOA and should not rewrite it as proposed by the Staff.

If the Commission believes that a rule on the subject of accounting should be retained, it should recognize and exempt those telephone companies operating under alternative regulation from such a rule and place alternative regulation companies where they belong, on the same footing as the CLECs and intermodal competitors that adhere to GAAP. The USOA requirement should apply only to rate-of-return companies.[2]

And, if the Commission believes that a rule on the subject of accounting requirements should be retained, it should explicitly recognize the potential for FCC forbearance under 47 U.S.C. § 160.[3] Otherwise, the Commission might, unintentionally, require the application of a rule that the FCC has essentially waived through its forbearance authority.[4]

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[2] Following this course would also require an amendment to Ohio Admin. Code § 4901:1-4-05.

[3] For example, the FCC granted petitions to forebear from enforcement of certain of that Commission's cost assignment rules in WC Dockets 07-21 and 05-342 on April 24, 2008 (Memorandum Opinion and Order, FCC 08-120). The rules are "still on the books" but, under the applicable statute, 47 U.S.C. § 160, the Commission found that it was appropriate to forbear from their enforcement.

[4] The Commission should, of course, recognize FCC forbearance actions with regard to all of its affected rules.

3. Administration of Boundaries

The proposed revisions to the boundary rules present several issues. The historic focus of the boundary rules was on maps that were maintained by the telephone companies and kept on file at the Commission. Exchange boundary maps should be viewed as a resource for a general representation of the service areas of the telephone companies depicted on those maps. The maps should not be viewed as the "final arbiter" on questions involving a specific lot or street address.

Over the years, the placement and location of ILEC facilities have become very well documented. There are seldom any disputes about the appropriate exchange from which to serve a particular location. Where issues have arisen, they have for the most part been resolved informally by the companies involved. In the everyday administration of customer service orders by the telephone companies, the use of maps has given way to more modern, useful, and detailed resources. Telephone companies use systems, such as a street address guide ("SAG") to confirm that a new customer's location is within their service area. The SAG is updated as new streets and subdivisions are developed and readied for the installation of telephone service. The Commission should not require the cumbersome and expensive verification and updating of boundary maps given the availability and use of more accurate and efficient resources, such as the SAG. Boundary maps do not display specific street addresses and locations, while the other resources do. No need has been shown to create detailed boundary maps that depict residential lots or particular street addresses for these purposes. No requirement should be imposed to create and file such detailed maps.

Division (A) appears to assume that the maps on the Commission's website are the "official" exchange boundary maps and would be the "final arbiter" in disputed boundary cases. While they may serve as a general representation of telephone company boundaries, the maps the Commission has produced are no substitute for the resources like the SAG and similar databases, which focus not on boundary lines on a map but on actual service addresses and the location of company facilities. Maintaining detailed maps for the Commission would require time, effort, and cost that is simply not essential to ascertaining the boundaries of an exchange given the alternative resources that are highly reliable and readily available today. Detailed documentation of the exchange boundaries is already maintained within the ILECs' internal records. And, as noted above, the companies themselves have generally been able to resolve disputes involving boundaries, which occasionally arise in connection with requests to serve unserved areas. Such disputes rarely require the Commission's intervention. It is also the case that exchanges and exchange boundaries are much less relevant in today's environment, with "all distance" and various flat-rate plans available from numerous telecommunications service providers. To require the ILECs to update and maintain exchange boundary maps that are of little or no useful value would be wasteful and would clearly be at odds with the Governor's Executive Order on "Implementing Common Sense Business Regulation." For these reasons, the Commission should not require the updating and filing of detailed exchange boundary maps.

For the same reasons that maps should not be required, the Commission should not require a listing of overlap customers as called for in Division (B). Overlap customers are customers who are physically located in one exchange but who are served by facilities (cable and wires) from an adjoining exchange. In some cases, it is simply more efficient, because of the location of telephone company facilities relative to exchange boundaries, to serve customers in this manner. This has been an accepted industry practice for years and has created very few issues that the Commission has had to address. It should be sufficient that company records are maintained on all overlap customers, perhaps with documentation why the overlap exists, without the need for "lists" of overlap customers to be maintained and filed with the Commission. Whatever the historic benefit and use of this information was, its time has passed. The overlap list provision of the proposed rule is no longer necessary and the proposed rule should be amended accordingly.

While Division (D) of the proposed Rule 4901:1-6-20 begins with the phrase "An ILEC *may* file a revised map . . . " (which sounds permissive), it appears that such a filing would not be permissive but would be required. As stated above, the filing of maps should not be required any longer given the changes in technology and the infrequent need for ILEC service area expansion. The filing of an application with a description of the proposed change, the reason for the proposed change, and the impact on existing subscribers should be sufficient.[5]

AT&T Ohio's experience with the "regulations" applicable to boundary borderline situations, now included in Division (E), shows that some of the terminology

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[5] If this rule is retained, the Commission should consider whether to extend it to those facilities-based CLECs that do not mirror the ILECs' exchange boundaries.

is dated and needs to be modernized. It should be noted that these "regulations" are rarely used because they are only needed when telephone service is going to be provided in unserved areas. The Staff took one small step in its proposed deletion of the word "trailer" in describing mobile home parks, but this does not go far enough. One must ask what is meant by the terms "tourist camp" or "garden-type housing project"? AT&T Ohio suggests that the language of these provisions be reviewed and updated to use modern terminology. The Commission's rules, and industry practices, should reflect current conditions, not historic concepts.

4. Filing of Contracts

The proposed edits to the language that would make up new rule 4901:1-6-21 present several concerns. First, the requirement to file for Commission approval "any contract," a term that is very broadly defined, appears to backtrack from recent Commission efforts at reducing regulation. To reimpose such a requirement would not be consistent with the directive of the Governor's Executive Order. Proposed Division (A) of this rule should not be adopted.

The Competitive Retail Service Rules, adopted just last year, call for the filing of an "ATR" application, which is described as follows:

> ATR - An application to conduct a transaction involving one or more LECs for the purchase, sale, or lease of property, plant, or business *which may affect the operating authority of a party to the transaction* pursuant to section 4905.48 of the Revised Code.

Ohio Admin. Code § 4901:1-6-14 (B)(1)(c) (emphasis added). The Competitive Retail Service rules also address customer contracts, in Ohio Admin. Code §4901:1-6-17. In addition to interconnection agreements, which are filed pursuant to federal law, it would appear that ATR contracts and customer contracts are the only contracts that are required to be filed for Commission approval under the current rules. To move from this streamlined regulatory environment to one in which "all agreements" must be filed would be a giant step backward. No need has been shown for the Commission to turn back the clock in this manner and require the filing of "*any* contract, agreement, or arrangement . . . with any other telephone company *relating in any way* to the construction, maintenance, or use of its plant or property, or to any service, rate, or charge." Proposed Rule 4901:1-6-21(A)(emphasis added).

The need for Commission review and approval of each such contract has also not been demonstrated. The proposed rule is not even limited to regulated services over which the Commission would have authority. For example, it would call for the filing of real estate contracts and contracts for the purchase and sale of surplus poles between two telephone companies. The need for Commission scrutiny of such matters must be questioned. The Commission should reject the proposed Division (A) and replace it with the following language:

> EXCEPT AS REQUIRED BY FEDERAL LAW AND BY OHIO ADMIN. CODE §§ 4901:1-6-14(B)(1)(C) AND 4901-1-6-17, ALL TELEPHONE COMPANIES ARE HEREBY EXEMPTED FROM FILING ANY AGREEMENT WITH ANY PARTY FOR COMMISSION REVIEW AND APPROVAL.

The Commission has the authority to grant this exemption (under its alternative regulation power) and it should do so, in keeping with the streamlined regulatory approach it adopted in the Competitive Retail Service Rules.

No need has been shown for continued regulation of "all agreements" between telephone companies, no matter what the subject matter of the agreement. Requiring the filing of all such agreements would add greatly to the cost of regulation, both for the Commission and for the affected companies, with no demonstrated public interest benefit. The proposed rule is unnecessary and should not be adopted.

5. Line Extension Charges

The Staff's proposed revisions to the "line extension" rule, now renumbered as 4901:1-6-22, are very minor. Here again, it is more appropriate to question the continued vitality of, and need for, the rule. The rule is rooted in history, when the ILECs were monopoly providers of service and public policy weighed in favor of "averaging" the costs of service across a large and captive body of customers. The rule runs contrary to the more recent regulatory principle that the "cost causer" should bear the costs of service. This is because the rule limits the charges that can be imposed on a customer - - a "cost causer" - - who requires a line extension to serve them. Line extension issues rarely arise in today's environment. The companies' Commission-approved tariffs, reflecting reasonable business practices but adapted to their own circumstances, would appear to be sufficient to address line extension issues. Such tariff provisions must meet the test of reasonableness and are subject to Commission oversight.

The continued need for this rule has not been shown. The rule is unnecessary and should be rescinded. However, the Commission should make it clear that LECs may assess line extension charges.

6. Conclusion

AT&T Ohio urges the Commission to rescind, amend, and adopt rules consistent with these comments.

Respectfully submitted,

AT&T Ohio

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