

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application and Petition :
of Nova Telephone Company, : Case No. 09-1899-TP-UNC
Filed Pursuant to Rules 4901:1-7-04 and :
4901:1-7-05, Ohio Administrative Code. :

**RESPONSE OF THE NOVA TELEPHONE COMPANY TO
AUGUST 11, 2011 COMMENTS OF ARMSTRONG TELECOMMUNICATIONS, INC.**

I. Introduction

On April 6, 2010, the Public Utilities Commission of Ohio (the "Commission") issued a Finding and Order in this case. The Commission granted the motion to intervene of Armstrong Telecommunications, Inc. and granted the application and petition of Nova Telephone Company to maintain its rural exemption for two years pursuant to 47 U.S.C. § 251(f)(1) and Rule 4901:1-7-04, Ohio Administrative Code ("O.A.C.") and (b) to suspend or modify the application of the requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) and Rule 4901:1-7-05, O.A.C. In its Finding and Order, the Commission stated:

- (17) As noted above, under *Iowa II*, the Commission must consider the total economic burden that will result from Armstrong's interconnection. Nova has projected customer losses and decreased revenue under Armstrong's BFR. Armstrong counters these numbers with its contention that it would be providing some limited revenue under terms of a yet-to-be negotiated interconnection agreement for trunk servicing, local number portability, and directory listings. When viewing the projected losses in combination with potential revenues from the interconnection, the Commission believes that the size of Nova is an important factor in Nova's ability to absorb any loss of customers. Nova has 1050 access lines in only two exchanges. Armstrong has the ability to serve the entirety of Nova's service territory. Based on financial information provided in this case, it would not take a significant loss of customers to result in a significant impact on Nova's financial health.

In addition, given the Applicant's concern that Armstrong would offer its local and long distance voice offerings using VoIP, a cable television offering, and a broadband connection to the Internet

service, the Commission examined the ability of Nova to offset potential revenue losses with similar bundles of offerings. While Nova provides long distance service to its customers, it does not provide its own long distance offering. Nova does provide a digital subscriber line (DSL) connection to the Internet, but does not engage in CLEC or out-of-territory/edge-out activities. Nor does Nova offer a cable television service offering. The Commission is concerned about the ability of Nova to grow revenues at this time, as it is not positioned to provide a “triple play” offering similar to that of Armstrong. Given these circumstances, and in the face of lost revenues and static costs, the financial impact on Nova of allowing Armstrong to compete would ultimately fall on the remaining customers either who could not afford Armstrong’s triple play offering or who simply wanted plain old telephone service. This result is inconsistent with the Commission’s goal of ensuring that the largest number of residents possible has access to high quality basic local exchange telephone service, regardless of income or geographic location.

In sum, upon examining the total economic impact of Armstrong’s interconnection, in conjunction with Nova’s ability to continue to offer basic local exchange service at affordable rates, we determine that to terminate immediately Nova’s rural exemption would cause undue economic burden on Nova and its ability to meet its provider of last resort obligations and universal service requirements. Therefore, after applying the criteria specified in 47 U.S.C. §251(f)(1) and examining the circumstances under which Nova operates at this time, the Commission finds a limited two-year extension of the rural exemption to be appropriate.

The Commission also notes that during this two-year period of time, the Federal Communications Commission (FCC) is expected to act upon its National Broadband Plan which includes recommendations for reforming the Universal Service Fund (USF) from a voice-only support mechanism to a broadband support fund (voice, data, and video). Furthermore, the FCC also anticipates reform of the Inter-Carrier Compensation (ICC) system to eliminate implicit subsidies between carriers. These actions will impact Nova’s and, possibly, Armstrong’s ability to provide a variety of telecommunication services to customers in rural areas and to be the “broadband provider of last resort” (Connecting America: The National Broadband Plan, FCC, March 16, 2010, at 144-146).

- (18) In light of the Commission’s approval of Nova’s application and petition to maintain its rural exemption under 47 U.S.C. §251(f)(1), it is not necessary to also examine the requirements of

47 U.S.C. §251(f)(2). However, turning to the parties' discussion of 47 U.S.C. §251(f)(2), the applicable provisions provide that the Commission can grant Nova's petition for suspension or modification of a requirement of 47 U.S.C. §251(b) or (c) if the Commission determines that the suspension or modification "(A)(i) is necessary to avoid a significant adverse economic impact on users of telecommunications service generally, (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience and necessity" (emphasis added). The Commission finds consistent with 47 U.S.C. §251(f)(2)(A)(ii) that Armstrong's BFR would impose an undue economic burden on Nova and its ability to meet its provider of last resort obligations. The presence of the word "or" does not require the Commission to apply the additional factors set forth in 47 U.S.C. §251(f)(2)(A)(i) and (iii). Next, by balancing the interest of Nova and Armstrong when making its decision, the Commission is taking into account the 47 U.S.C. §251(f)(2)(B) reference to the public interest, convenience, and necessity. In sum, the Commission believes it appropriate to allow Nova two additional years to prepare for competition, regardless of whether the two-year period is an extension of a rural exemption under 47 U.S.C. §251(f)(1) or a suspension under 47 U.S.C. §251(f)(2). The Commission adds that during this period, which ends two years from the date of the Commission order, Nova can entertain BFRs but is not required to do so.

- (19) During this two-year time, the Commission emphasizes that it is imperative that Nova makes significant progress in order to prepare for imminent competition in its service area. Nova is instructed to submit, on a semi-annual basis during the two-year extension of the rural exemption, reports to the Commission staff outlining the steps it is taking to prepare for any potential introduction of competition in its traditional service territory. After two years, Nova's rural exemption will be terminated.

Armstrong Telecommunications, Inc. did not file an application for rehearing from the April 6, 2010 Finding and Order in Case No. 09-1899-TP-UNC.

II. Nova Telephone Company's Status

On September 1, 2010, the Commission issued an Opinion and Order in Case No. 10-849-TP-ACO approving a change in ownership of Nova Telephone Company ("NOVA") whereby VNC Enterprises, LLC would acquire control of Nova. In its Opinion and Order, the

Commission denied Armstrong's Motion to Intervene and granted the Office of the Ohio Consumers' Council's Motion to Intervene.

Since the issuance of the April 6, 2010 Finding and Order in Case No. 09-1899-TP-UNC, the new management of Nova Telephone Company has worked diligently to prepare Nova for competition. It has submitted semi-annual reports to the Commission staff outlining the steps that it has taken to prepare for competition.

Only two of the other factors that the Commission cited in its April 6, 2010 Finding and Order have changed. Nova now has only 880 access lines in two exchanges, a reduction of 16% from 2010. It would not take a significant loss of customers to result in a significant impact on Nova's financial health. Nova does now provide long distance service to its customers. However, Nova has not engaged in CLEC out-of-territory/edge-out activities. Nova has not offered cable television service. Despite its best efforts, Nova may still require some additional time beyond April 2012 in order to position itself to be able to compete with Armstrong.

III. August 11, 2011 Comments of Armstrong Telecommunications, Inc.

On August 11, 2011, Armstrong Telecommunications, Inc. filed comments in Case No. 09-1899-TP-UNC. Armstrong cited the FCC Declaratory Ruling in In the Matter of Petition of CRC Communications of Maine, Inc. and Time Warner Cable, Inc. for Preemption Pursuant to Section 253 of the Communications Act, et al., FCC Declaratory Ruling, May 25, 2011, No. 11-83. Armstrong argues that the FCC's Declaratory Ruling provides direct, express additional support for its argument that, whatever the economic impact of an interconnection request for purposes of section 251(c), the rural exemption does not negate an incumbent's LEC's interconnection responsibilities under section 251(a) and (b) -- the provisions under which

Armstrong specifically requested interconnection. Armstrong has requested that the Commission review its April 6, 2010 Finding and Order, revise it accordingly, and require Nova to interconnect with Armstrong under reasonable terms and conditions as this Commission deems appropriate and proper. Armstrong did not allege that any of the Commission's findings in Case No. 09-1899 had changed.

IV. The FCC Declaratory Ruling

On May 26, 2011, the Federal Communications Commission ("FCC") issued a Declaratory Ruling in Docket No. FCC11-83 the purpose of which was to clarify statutory rights under Section 251 of the Communications Act of 1934. The FCC clarified that LECs are obligated to fulfill all of the duties set forth in sections 251(a) and (b) of the Act, including the duty to interconnect and exchange traffic, even if the LEC has a rural exemption from the obligation set forth in section 251(c). The FCC also clarified that the rural incumbent LECs' obligations under sections 251(a) and (b) can be implemented through the State Commission arbitration and mediation provisions in section 252 of the Act.

CRC Communications of Maine, Inc. (CRC) and Time Warner Cable, Inc. (TWC) ask the FCC to preempt an order by the Maine Public Utility Commission (Maine PUC) addressing issues similar to the ones the FCC addressed in its Declaratory Ruling. The Oklahoma Western Telephone Company (OWTC) filed a Petition for Clarification asking "that the Commission clarify that the determination of an exempt rural carrier's interconnection reciprocal compensation and other duties imposed by section 251(a) and (b) of the Act are not subject to the mandatory negotiation and arbitration procedures respectively specified in sections 251(c) and section 252 of the Act.

The FCC declined to grant these petitions and found that with its Declaratory

Ruling, preemption was unnecessary. The FCC stated in summary as follows:

14. Thus, we believe that a uniform, national policy concerning the scope of the rural exemption is necessary to promote local competition, prevent conflicting interpretations of carriers' statutory obligations under the Act, and eliminate a potential barrier to broadband investment. State commissions and federal courts have reached different conclusions about the obligation to negotiate and arbitrate under section 251(a) and (b) in the event that the incumbent LEC has a rural exemption under section 251(f)(1). Therefore, to further the Commission's goals in promoting facilities-based competition, we take this opportunity to clarify the relationship between the section 251(a) and (b) obligations and the section 251(f)(1) rural exemption. Consistent with Commission precedent, we reaffirm that all telecommunications carriers, including rural carriers covered by section 251(f)(1), have a basic duty to interconnect their networks under section 251(a) and that all LECs, including rural LECs covered by section 251(f)(1), have the obligation to comply with the requirements set forth in section 251(b). We also clarify that a rural carrier's exemption under section 251(f)(1) offers an exemption only from the requirements of section 251(c) and does not impact its obligations under sections 251(a) or (b).

. . .

19. For the reasons discussed below, we conclude that requests made to incumbent LECs for interconnection and services pursuant to sections 251(a) and (b) are subject to state commission arbitration as set forth in section 252, and that section 251(f)(1) does not exempt rural incumbent LECs from the compulsory arbitration process established in that provision. In addition to arbitration, requests for interconnection and services pursuant to sections 251(a) and (b) are also subject to voluntary negotiation remedies, including mediation by the state commission. As discussed in greater detail below, our conclusion is consistent with the language, structure, and intent of sections 251 and 252.

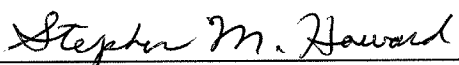
V. Nova's Recommendation

Nova submits that the Commission need not change its April 6, 2010 Finding and Order. Armstrong did not file an application for rehearing from the April 6, 2010 Finding and Order. Nova has complied with the April 6, 2010 Finding and Order in Case No. 09-1899. The

Commission addressed the status of the November 19, 2009 bona fide request ("BFR") for interconnection as supplemented on December 21, 2009.

If it chooses, Armstrong may submit a new BFR for interconnection to Nova Telephone Company. Indeed, the Commission, in its April 6, 2010 Finding and Order at Finding 18, contemplated that Nova could entertain BFRs during the two year extension. Nova will then respond to the BFR consistent with the FCC's Declaratory Ruling and negotiations can begin. If the negotiations are unsuccessful in reaching an agreement, either party can resort to Commission arbitration or Commission mediation. However, Nova submits that the Commission's April 6, 2010 Finding and Order was and is correct, supported by the facts, and that despite working diligently to prepare for competition, Nova may even need additional time beyond April 2012 to position itself in order to compete with Armstrong.

Respectfully submitted,



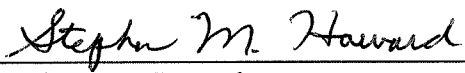
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail
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Summary: Response Response of The Nova Telephone Company to August 11, 2011
Comments of Armstrong Telecommunications, Inc. electronically filed by Mr. Stephen M
Howard on behalf of The Nova Telephone Company