

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review)
of Chapter 4901:1-7, of the Ohio)
Administrative Code, Local Exchange) Case No. 12-922-TP-ORD
Carrier-to-Carrier Rules.)

ENTRY

The Commission finds:

- (1) Section 119.032, Revised Code, requires all state agencies to conduct a review, every five years, of their rules and to determine whether to continue their rules without change, amend their rules, or rescind their rules. The Commission has established the rule review date for the local exchange carrier-to-carrier rules contained in Chapter 4901:1-7, Ohio Administrative Code (O.A.C.), as November 30, 2012.
- (2) Section 119.032(C), Revised Code, requires that the Commission determine:
 - (a) Whether the rules should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
 - (b) Whether the rules need amendment or rescission to give more flexibility at the local level;
 - (c) Whether the rules need amendment to eliminate unnecessary paperwork; and
 - (d) Whether the rules duplicate, overlap with, or conflict with other rules.
- (3) In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules

that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative unintended consequences, or unnecessarily impede business growth.

- (4) Additionally, in accordance with Section 121.82, Revised Code, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis. If there will be an adverse impact on businesses, as defined in Section 107.52, Revised Code, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact.
- (5) In making its review, an agency is also required to consider the continued need for the rules, the nature of any complaints or comments received concerning the rules, and any factors that have changed in the subject matter area affected by the rules.
- (6) The Commission's staff (staff) has evaluated the rules contained in Chapter 4901:1-7, O.A.C., and recommends amendments to several rules as shown in the attachment to this entry. Specifically, staff recommends the elimination of Rules 4901:1-7-27 and 4901:1-7-28, O.A.C. Specific to Rule 4901:1-7-27, O.A.C., staff believes that this rule is no longer necessary as the Commission has previously granted a permanent waiver of the rule. See Case No. 09-586-TP-WVR, *In the Matter of the Application of the Ohio Telecom Association, on Behalf of its Members, for an Order Granting a Waiver of Rule 4901:1-7-27, Ohio Administrative Code*, Entry (August 12, 2009). In regard to Rule 4901:1-7-28, O.A.C., staff believes that, while this rule may in theory serve a purpose, its application, in actuality, is problematic due to the difficulty of engaging in discovery and preparing testimony within compressed hearing time frames.

Consistent with the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 07-135 et al., *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers* (rel. November 18, 2011), staff proposes specific modifications to Rules 4901:1-7-12, O.A.C., (Compensation for the transport and termination of telecommunications traffic), and 4901:1-7-14, O.A.C., (Compensation for intrastate switched access traffic and carrier-to-carrier traffic).

Staff also proposes clarifying language modifications to Rule 4901:1-7-01, O.A.C., (Definitions), Rule 4901:1-7-02, O.A.C., (General applicability), Rule 4901:1-7-03, O.A.C., (Toll presubscription), Rule 4901:1-7-04 (Rural telephone company exemption), Rule 4901:1-7-05, O.A.C., (Rural carrier suspensions and modifications), Rule 4901:1-7-06, O.A.C., (Interconnection), Rule 4901:1-7-08, O.A.C., (Negotiation and mediation of 47 U.S.C. 252 interconnection agreements), Rule 4901:1-7-09, O.A.C., (Arbitration of 47 U.S.C. 252 interconnection agreements), Rule 4901:1-7-13, O.A.C., (Transit traffic compensation), Rule 4901:1-7-20, O.A.C., (Cost study requirements), Rule 4901:1-7-23, O.A.C., (Rights-of-way, poles, ducts, and conduit), Rule 4901:1-7-24, O.A.C., (Local number portability), 4901:1-7-25, O.A.C., (Number optimization), Rule 4901:1-7-26, O.A.C., (Competitive safeguards), and Rule 4901:1-7-29, O.A.C., (Local exchange carrier default).

Staff's proposed changes to Chapter 4901:1-7, O.A.C., are posted under Pending Rules and Rules of Special Interest, Local Exchange Carrier-to-Carrier Rules at: www.puco.ohio.gov/puco/rules. To minimize the expense of this proceeding, the Commission will serve a paper copy of only this entry. All interested persons are directed to download the proposed rules from the above website, or to contact the Commission's Docketing Division to be sent a paper copy.

- (7) The Commission requests comments from interested persons to assist in the review required by Section 119.032(C), Revised Code, and Executive Order 2011-01K. Comments should be filed, either via electronic filing or in hard copy, by April 13, 2012. Reply comments should be filed by April 27, 2012.

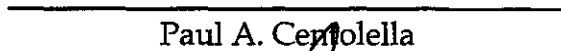

It is, therefore,


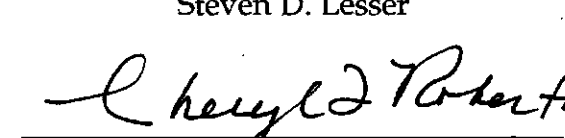
ORDERED, That all interested persons file comments on the proposed rule changes by April 13, 2012 and file any reply comments by April 27, 2012. It is, further,

ORDERED, That a copy of this entry be served upon all regulated telephone companies, the Ohio Telecom Association, and any other interested person of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman

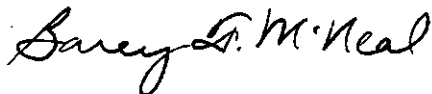

Paul A. Centolella

Andre T. Porter


Steven D. Lesser

Cheryl L. Roberto

JSA/dah

Entered in the Journal

MAR 21 2012


Barcy F. McNeal
Secretary

March 21, 2012
Commission Staff's Proposal for Chapter 4901:1-7
Local Exchange Carrier-to-Carrier Rules
Case No. 12-922-TP-ORD

4901:1-7-01 Definitions.

As used within this chapter, these terms denote the following:

- (A) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten per cent.
- ~~(B) "Commercial mobile radio service" (CMRS) is specifically limited to include mobile telephone, mobile cellular telephone, paging, personal communication services, and specialized mobile radio service providers when serving as a common carrier in Ohio. Fixed wireless service is not considered as CMRS.~~
- (CB) "Commission" means the public utilities commission of Ohio.
- ~~(DC)~~ "Competitive local exchange carrier" (CLEC) means, with respect to a service area, any facilities-based and nonfacilities-based, local exchange carrier that was not an incumbent local exchange carrier on the date of the enactment of the Telecommunications Act of 1996 (1996 Act), or is not an entity that, on or after such date of enactment, became a successor or assign of an incumbent local exchange carrier.
- (ED) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company.
- ~~(EF) "Exchange" is a geographic service area established by an incumbent local exchange carrier and approved by the commission, which usually embraces a city, town, or village and a designated surrounding or adjacent area. There are currently seven hundred forty eight exchanges in the state of Ohio.~~
- ~~(GF)~~ "Facilities-based CLEC" means, with respect to a service area, any local exchange carrier that uses facilities it owns, operates, manages, or controls to provide basic local telephone exchange services to the public on a common carrier basis or access to telephone exchange service or facilities for the purpose of originating or terminating telephone toll service; and that was not an incumbent local exchange

carrier on the date of the enactment of the 1996 Act. Such carrier may partially or totally own, operate, manage, or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of other the incumbent local exchange carrier's local exchange services.

(HG) "Incumbent local exchange carrier" (ILEC) means any facilities-based local exchange carrier that: (1) on the date of enactment of the 1996 Act, provided basic local exchange service with respect to an area; and (2) (a) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or (b) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (2)(a).

(HH) "InterLATA service" means telecommunications between a point located in a local access and transport area and a point outside such area.

(JI) "Local access and transport area" (LATA) means, as designated by the "Modification of Final Judgment," United States v. Western Electric Co., (C.A. No. 82-1092), 552 F. Supp. 131 (1982), an area in which a local exchange carrier is permitted to provide service. It contains one or more local exchange areas.

~~(K) "Large ILEC" means any ILEC serving fifty thousand or more access lines within the state of Ohio.~~

(JL) "Local exchange carrier" (LEC) means any facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to the public on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a commercial mobile radio service (CMRS) under 47 U.S.C. 332(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, except to the extent that the federal communications commission finds that such service should be included in the definition of such term.

(KM) "Local presubscribed interexchange carrier" is a designation used to identify an intrastate intraLATA presubscribed interexchange carrier that provides intrastate intraLATA presubscribed interexchange service to customers.

(LN) "Network element" means the facility or equipment used in the provision of a telecommunication service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including, but not limited to, subscriber numbers, databases, signaling

systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(MΘ) "Number portability" means the ability of customers of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one telephone company to another.

(NP) "Rural carrier" means a LEC operating entity as defined in 47 U.S.C. 251(f)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(OQ) "Rural telephone company" means a LEC operating entity as defined in 47 U.S.C. 153(37), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(PR) "Telecommunications" for purposes of this chapter, shall have the same meaning as defined in 47 U.S.C. 153(43), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

~~"Small ILEC" means any ILEC serving less than fifty thousand access lines within the state of Ohio.~~

(QS) "Telephone company" for purposes of this chapter, shall have the same meaning as defined in division (A)(12) of section 4905.03 of the Revised Code and includes the definition of "telecommunications carrier" incorporated in 47 U.S.C. 153(44), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(R) "Telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with customers for exchange service.

(S) "Toll service provider" means a provider of telephone toll service.

(T) "Wireless service" means federally licensed commercial mobile service as defined in the "Telecommunications Act of 1996," 110 Stat.61,151, 153, 47 U.S.C. 332(d) and further defined as commercial mobile radio service (CMRS) in 47 C.F.R. 20.3. CMRS is specifically limited to include mobile telephone, mobile cellular telephone, paging, personal communication services, and specialized mobile radio service providers when serving as a common carrier in Ohio and excludes fixed wireless service.

(U) "Wireless service provider" means a facilities-based provider of wireless service to one or more end users in the state of Ohio.

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~~ **November 30, 2012**.
- (B) The obligations found in rules 4901:1-7-03 to ~~4901:1-7-29~~ **4901:1-7-27** 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 **and consistent with state and federal law**, waive any requirement, standard, or rule set forth in this chapter, **other than a requirement mandated by statute**.
- (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 4901:1-6-058 of the Administrative Code.

4901:1-7-03 Toll presubscription.

- (A) All local exchange carriers (LEC) shall charge intrastate intraLATA toll service 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 ~~outlined~~**discussed** in paragraph (G) of this rule.

Whenever a LEC charges an intrastate intraLATA toll service 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 service 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 service 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 service provider 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 service providers to aid in the customer's selection. If, after being read the list of all available toll service 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 service providers does not apply to CLECs, AT&T Ohio, and Frontier 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 service 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.

4901:1-7-04 Rural telephone company exemption.

- (A) A rural telephone company is subject to the provisional rural telephone exemption referenced in 47 U.S.C. 251(f)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, until such time as the rural telephone company receives a bona fide request for interconnection, services, or network elements, and the commission terminates the rural telephone company exemption pursuant to paragraph (D) of this rule. Should a nonrural telephone company sell, devise, assign, or otherwise transfer any portion of its facilities to a rural telephone company and such facilities are subject to an interconnection agreement(s) at the time of the transfer, such facilities shall remain subject to all obligations of the existing interconnection agreement(s). Such facilities will be subject to requirements referenced in 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, unless the commission rules otherwise.
- (B) If a rural telephone company receives a bona fide request for interconnection, services, or network elements pursuant to 47 U.S.C. 251(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and it seeks to maintain a rural telephone company exemption, it shall file a UNC application with the commission within fifteen calendar days after receiving the request. The telephone company requesting interconnection shall file a response within fifteen calendar days after the rural telephone company's application for exemption. The burden of proof regarding the termination of a rural telephone company exemption pursuant to 47 U.S.C. 251(f)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, rests upon the telephone company requesting interconnection.

- (C) The commission will review such application for exemption and the response to it on an individual case basis within one hundred twenty calendar days of the commission's notice of the bona fide request for interconnection.
- (D) In reviewing the request for a rural telephone company exemption, the commission will review the application and responses and terminate the exemption should the commission find that the interconnection request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (E) If the commission terminates the rural telephone company exemption, the timeframes established in rule 4901:1-7-07 of the Administrative Code begin anew with the issuance of the commission's order.
- (F) If a rural telephone company does not seek to maintain an exemption, it shall follow the negotiation procedures set forth in rule 4901:1-7-07 of the Administrative Code. ~~The commission shall evaluate applications for exemption by a rural telephone companies operating under Chapter 4901:1-4 of the Administrative Code on a case-by-case basis.~~
- (G) If the commission, pursuant to the review process established in rule 4901:1-7-04(C) of the Administrative Code, grants the request for a rural telephone company exemption, the rural telephone company is still obligated to fulfill all the duties set forth in 47 U.S.C. 251(a) and (b), including the duty to interconnect and exchange traffic. The rural telephone company's obligations pursuant to 47 U.S.C. 251(a) and (b) is subject to the commission procedures set forth in rules 4901:1-7-06 through 4901:1-7-09 of the Administrative Code, as applicable, to implement 47 U.S.C. 252.

4901:1-7-05 Rural carrier suspensions and modifications.

- (A) If an incumbent local exchange carrier (ILEC), serving fewer than two per cent of the nation's subscriber lines installed in the aggregate, seeks a suspension or modification of any portion or portions of 47 U.S.C. 251(b) or (c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, as a rural carrier, it must file a UNC application with the commission within fifteen calendar days of receiving a bona fide request for interconnection.
- (B) Such application must set forth with particularity the provision or provisions from which the rural carrier seeks suspension or modification. The commission shall act

within one hundred eighty calendar days after receiving such application. The burden of proof regarding the suspension or modification rests upon the rural carrier.

(C) Pending such action, the commission may suspend enforcement of any requirement to which the application applies with respect to the requesting local exchange carrier. The commission may also consider such request in the context of the rural carrier's filings pursuant to **rule 4901:1-6-08 of the Administrative Code**. ~~sections 4905.24, 4927.03, and/or 4927.04 of the Revised Code.~~

(D) In determining whether a suspension or modification is warranted, the commission will consider the following:

(1) Is the proposed suspension or modification necessary in order:

(a) To avoid a significant adverse economic impact on users of telecommunications services generally.

(b) To avoid imposing a requirement that is unduly economically burdensome.

(c) To avoid imposing a requirement that is technically infeasible.

(2) Is the proposed suspension or modification consistent with the public interest, convenience, and necessity.

4901:1-7-06 Interconnection.

The term interconnection as used in this chapter refers to the facilities and equipment physically linking two networks for the mutual exchange of traffic.

(A) General interconnection standards

(1) Each telephone company has the duty to interconnect directly or indirectly with the facilities and equipment of other telephone companies **for the exchange of telecommunications traffic regardless of the network technology underlying the interconnection pursuant to 47 U.S.C. 251(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.**

(2) Each telephone company shall make available interconnection to other telephone companies for the mutual exchange of **telecommunications** traffic

upon receipt of a request for interconnection **regardless of the network technology underlying the interconnection**, unless the commission orders a waiver of this requirement.

- (3) All telephone companies shall have the duty to negotiate in good faith the terms and conditions of the interconnection agreement **for the exchange of telecommunications traffic regardless of the network technology underlying the interconnection**.
- (4) Each incumbent local exchange carrier (ILEC) shall provide, for the facilities and equipment of any requesting telephone company, interconnection with the ILEC's network, for the transmission and routing of telephone exchange traffic, exchange access traffic, or both. Also, a telephone company requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an ILEC's network is not entitled to receive interconnection pursuant to 47 U.S.C. 251(c)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (5) Each ILEC shall provide interconnection to requesting telephone companies at any technically feasible point within its network, with quality at least equal to that provided by that ILEC to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection pursuant to 47 C.F.R. 51.305, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. Any telephone company requesting interconnection to the existing network may do so via feature group D-type interconnection or via a mutually agreed upon interconnection arrangement. Interconnecting carriers may use one-way trunks or two-way trunks to interconnect for traffic transport and termination if it is technically feasible. Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to: a) collocation at the premises of the ILEC; and b) meet point interconnection arrangements, pursuant to rule 4901:1-7-11 of the Administrative Code, 47 C.F.R. 51.321 and 51.323, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. If a meet point arrangement is requested from the ILEC for the purpose of gaining access to unbundled network elements and/or for the purpose of exchanging traffic with the ILEC, each carrier is required to bear the network cost on its side of the point of interconnection in the meet point arrangement.

- (6) Technically feasible points of interconnection within the ILEC's network shall include at a minimum:
- (a) The line side of a local switch.
 - (b) The trunk side of a local switch.
 - (c) The trunk interconnection points for a tandem switch.
 - (d) Central office cross-connect points.
 - (e) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases.
 - (f) The points of access to unbundled network elements as described in rule 4901:1-7-16 of the Administrative Code and 47 CFR 51.319, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (7) Interconnection rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a request for interconnection or through arbitration. Such arrangements shall be processed pursuant to rule 4901:1-7-07 of the Administrative Code.

(B) Basic requirements for request for interconnection

A request for interconnection shall be in writing and shall detail the specifics of the request. A request for interconnection shall include at a minimum, as applicable, the following:

- (1) The requested meet point(s) or, in the alternative, the requested point(s) of interconnection (e.g., the end office, tandem, etc.).
- (2) The requested reciprocal compensation arrangement for transport and termination of **telecommunications** traffic.
- (3) A description of any required unbundled network elements and the requested method of access to the operation support system associated with these unbundled network elements.

- (4) A list of the requested telecommunications services to be offered for resale by the providing telephone company, and required operational support systems associated with the resale of these telecommunications services.
- (5) If transit **telecommunications** traffic functionality is required, the requested method(s) of providing that functionality at each requested point of interconnection.
- (6) A list including names, phone numbers, e-mail, and areas of responsibility of the requesting carrier's contact persons for the negotiation process.

4901:1-7-07 Establishment of interconnection agreements.

(A) Processing requests for interconnection

- (1) Any request for an interconnection arrangement pursuant to 47 U.S.C. 251 and 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, must be submitted via facsimile, overnight mail, e-mail, or hand-delivery to the appropriate personnel or division within the providing telephone company's organization in charge of negotiating interconnection arrangements between telephone companies. The requesting telephone company must also notify simultaneously the chief of the telecommunications division of the utilities department of the commission.
- (2) At any point in time during the negotiation, any party to the negotiation may ask the commission to participate in the negotiation and to mediate any differences arising during the course of the negotiation, pursuant to rule 4901:1-7-08 of the Administrative Code.
- (3) An incumbent local exchange carrier (ILEC) shall make available without unreasonable delay to any requesting telephone company any agreement in its entirety to which the ILEC is a party that is approved by the commission pursuant to 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, upon the same rates, terms, and conditions as those provided in the agreement and pursuant to 47 C.F.R. 51.809, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

- (4) Negotiated interconnection agreements shall be effective upon filing. The agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(B) Requests for the negotiation of an amendment to an existing interconnection arrangement

- (1) A bona fide request (BFR) for interconnection may be used to request an interconnection arrangement, service, or unbundled network element that is subsequent to, unique, or in addition to an existing interconnection agreement and is to be added as an amendment to the underlying interconnection agreement.
- (2) All amendments of an existing, approved interconnection agreement must be filed within ten calendar days of its execution and filed with the commission as a negotiated agreement (NAG).
- (3) Interconnection agreement amendments shall be effective upon filing. The amendment to the agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(C) Process for the negotiation of subsequent interconnection agreements

- (1) Parties shall negotiate the rates, terms, and conditions of subsequent interconnection arrangements in accordance with the terms of their existing interconnection agreement. Both parties to the existing interconnection agreement shall notify the chief of the telecommunications division of the utilities department of the commission when negotiations of a subsequent interconnection agreement have commenced.
- (2) A party to an existing interconnection agreement may seek arbitration of a subsequent interconnection agreement pursuant to the arbitration rules set forth in rule 4901:1-7-09 of the Administrative Code.
- (3) Subsequent interconnection agreements, whether adopted through negotiation or arbitration, shall be docketed as a new case within ten calendar days of signing.

- (4) The subsequent interconnection agreement shall be effective upon filing. The subsequent interconnection agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(D) Interconnection agreement approval process

- (1) Title 47 U.S.C. 252(e)(2)(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, limits the legal test to be applied to the approval of negotiated interconnection agreements to whether (a) the agreement (or portion thereof) is discriminatory against another telephone company, and (b) whether the implementation of such agreement is in the public interest.
- (2) In light of the limited legal test set forth in 47 U.S.C. 252(e)(2)(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, all negotiated interconnection agreements, all executed adoptions of existing interconnection agreements under 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, all negotiated subsequent interconnection agreements, and all amendments to such agreements shall be approved pursuant to the ninety-day process set forth in 47 U.S.C. 252(e)(4), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. All arbitrated agreements shall be approved pursuant to the thirty-day process set forth in 47 U.S.C. 252(e)(4), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(E) BFR fee

A providing telephone company is entitled to recover costs associated with the evaluation of a unique request for interconnection, examination of facilities for special arrangements, and technical and economic feasibility assessments. If the BFR fee exceeds five hundred dollars, the providing telephone company must allow, upon request by the requesting telephone company, payment of that fee over no more than twelve months whether or not the requesting telephone company proceeds with the request. The commission, through the arbitration process, will resolve disputes concerning the amount of the BFR fee. The BFR fee shall be subject to commission review and approval.

4901:1-7-08 Negotiation and mediation of 47 U.S.C. 252 interconnection agreements.

Interconnection agreements pursuant to 47 U.S.C. 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, shall be negotiated, mediated, and

arbitrated under the following mediation **guidelines in this section** and arbitration guidelines outlined in rule 4901:1-7-09 of the Administrative Code:

(A) Duty to negotiate

All telephone companies have the duty to negotiate in good faith the terms and conditions of their agreements. The commission will presume that a party who refuses to provide information about its costs or other relevant information upon request of the other party has not negotiated in good faith provided that, where appropriate, the other party agrees to execute a reasonable confidentiality agreement. This presumption of failure to negotiate in good faith is rebuttable. The commission will resolve disputes concerning the furnishing of information when raised by a party to the negotiation and may impose sanctions where appropriate.

(B) Mediation

- (1) Mediation is a voluntary alternative dispute resolution process in which a neutral third party assists the parties in reaching their own settlement. At any point during the negotiation, any party or both parties to the negotiation may ask the commission to mediate any differences arising during the course of the negotiation
- (2) To request mediation, a party to the negotiation shall notify in writing the chief of the telecommunications section of the commission's legal department and the chief of the telecommunications division of the utilities department of the commission. A copy of the mediation request should be simultaneously served on the other party in the dispute. The request shall include the following information:
 - (a) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.
 - (b) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.
 - (c) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiations and to whom inquiries should be made.
 - (d) The negotiation history, including meeting times and locations.

- (e) A statement concerning the differences existing between the parties, including relevant documentation and arguments concerning matters to be mediated.
 - (f) The other party to the negotiation shall provide a written response within seven calendar days of the request for mediation to the chief of the telecommunications section of the commission's legal department and to the chief of the telecommunications section of the utilities department. The response to a request for mediation shall be simultaneously served upon the telephone company requesting the mediation.
- (3) The commission will appoint a mediator to conduct the mediation. The mediator will promptly contact the parties to the negotiation and establish a time to commence mediation. The mediator will work with the parties to establish an appropriate schedule and procedure for the mediation.
- (4) The mediator's function is to be impartial and to encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator may schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information, attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.
- (5) Participants in the mediation must have the authority to enter into a settlement of the matters at issue.
- (6) Confidentiality
- (a) Discussions during the mediation process shall be private and confidential between the parties. By electing mediation under this rule, the parties agree that no communication made in the course of and relating to the subject matter of the mediation shall be disclosed, except as permitted in this chapter.
 - (b) No party shall use any information obtained through the mediation process for any purpose other than the mediation process itself. This restriction includes, but is not limited to, using any information obtained through the mediation process to gain a competitive advantage.

- (c) As provided in the Ohio Rules of Evidence 408, offers to compromise disputed claims and responses to them are inadmissible to prove the validity of that claim in a subsequent proceeding. Evidence of conduct or statements made in compromise negotiations are also not admissible in a future proceeding. This rule does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.
- (7) Parties to the mediation shall reduce to writing the mediated resolution of all or any portion of the mediated issues and submit the resolution to the mediator.
- (8) A member of the commission staff or an attorney examiner who serves as a mediator shall, by virtue of having served in such capacity, be precluded from serving in a decision-making role or as a witness on matters subject to mediation in a formal commission case involving the same parties and the same issues.

4901:1-7-09 Arbitration of 47 U.S.C. 252 interconnection agreements.

- (A) Arbitration is an alternative dispute resolution process whereby parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a recommended decision to the commission. Any party to the negotiation of an interconnection agreement may, during the period from the one hundred thirty-fifth to the one hundred sixtieth day (inclusive) after the date on which a local exchange carrier receives a request for negotiation, petition the commission to arbitrate any open issues.
- (B) The commission will only arbitrate issues that have been unresolved between the parties and filed with the commission in the petition for arbitration or the response to the petition.
- (C) To petition the commission for arbitration, a party to the negotiation shall file two copies of the request with the commission's docketing division. Docketing will assign a docket number using the industry code TP and the purpose code ARB.
- (D) The petition must include the following information:
 - (1) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.

- (2) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.
- (3) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiation and to whom inquiries should be made.
- (4) The negotiation history, including meeting times and locations.
- (5) A list of the petitioning party's unresolved issues and a clear explanation of that party's position on the listed issues.
- (6) All relevant nonproprietary documentation on any other issue discussed and resolved by the parties.
- (7) A statement identifying information needed to decide unresolved issues or information that has been requested during negotiations but not yet provided.

(E) Notice of petition for arbitration

A petitioner requesting the commission to arbitrate unresolved issues shall provide a copy of the petition and accompanying documentation to the other party not later than the day on which the petition is filed with the commission.

(F) Opportunity to respond to petition

A nonpetitioning party to a petition for arbitration shall file a response to the petition within twenty-five calendar days after the petition to arbitrate is filed. The response should identify the nonpetitioning party's position on the petitioning party's unresolved issues. In addition, the ~~responding~~ **nonpetitioning** -party may identify additional unresolved issues with a clear explanation of its position on the additional issues it identifies.

(G) Commission responsibility

- (1) Upon receipt of a timely and complete petition for arbitration, the commission shall appoint an arbitration panel. It is the function of the arbitration panel to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

- (2) Within ten calendar days of the filing of a request for arbitration, the arbitration panel will schedule a conference to be held within thirty calendar days after the filing of the arbitration petition. The purpose of the conference is to plan an arbitration hearing date, identify witnesses to be presented at the hearing, discuss possible admissions or stipulations of uncontested matters, clarify the issues to be resolved, identify additional information needed to reach a decision on the unresolved issues, schedule the production of relevant documents and other information, identify issues which have been resolved, discuss or rule on any other appropriate procedural matters, and consider any other procedures that will expedite the arbitration process. The arbitration panel is authorized to order any party to provide information that it deems necessary to reach a decision on the unresolved issues and to establish the time period for providing the information.
- (3) Unless otherwise determined by the arbitration panel, seven calendar days prior to the arbitration hearing, each party shall file an arbitration package that will assist the arbitrators in the conduct of the hearing. Unless previously submitted in writing to the panel, the arbitration package shall contain: the list of issues to be arbitrated as identified by the petition for arbitration or the response to the petition, the party's position as to each issue, identification of issues which have been resolved by the parties and a description of the resolution, the party's prefiled testimony, the exhibits which the party intends to introduce at the hearing, and a list of factual stipulations upon which the parties have agreed. Given the expedited nature of the arbitration process, factual stipulations are encouraged.
- (4) Unless otherwise determined by the arbitration panel and the parties, the panel will conduct a hearing with prefiled testimony, transcription of the hearing, and cross-examination of witnesses. Unless determined otherwise by the arbitration panel after consultation with the parties, the length of the hearing, including oral argument, will be limited to four calendar days. Generally, the arbitration panel will conduct the hearing process according to the following procedures:
 - (a) The panel will provide the parties at least fifteen calendar days' written notice of the hearing.
 - (b) Unless consolidation of issues is permitted, only parties to the negotiation will be permitted to participate as parties to the arbitration hearing.

- (c) The arbitration panel will permit discovery. Basic cost information to support prices for interconnection, services, or network elements should be exchanged expeditiously. The panel will establish a schedule for additional discovery by entry or at the prehearing conference.
- (d) Whenever possible, the parties should enter into factual stipulations given the expedited hearing schedule.
- (e) The chair of the arbitration panel will preside over the hearing.
- (f) A written transcript of the hearing will be prepared.
- (g) Witnesses shall be subject to cross-examination on their testimony. However, the arbitration panel shall have the authority to limit or prohibit cross-examination on policy or legal issues.
- (h) Instead of requiring post-hearing briefs, the panel may hear oral arguments of the parties at the conclusion of the hearing.
- (i) The arbitration panel will limit its consideration of any petition for arbitration and any response to the unresolved issues raised in the petition and response.
- (j) The parties to the arbitration may be required to provide additional information as may be necessary for the arbitration panel to reach a decision on the unresolved issues. Information provided to the arbitration panel shall also be provided at the same time to the other parties to the arbitration. If any party refuses or fails to respond on a timely basis to any reasonable request from the arbitration panel, the arbitration panel may proceed on the basis of the best information available on the record.
- (k) The commission shall resolve each issue set forth in the petition and the response by imposing conditions that ensure that the resolution and conditions meet the requirements of 47 U.S.C. 251, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, establish rates for interconnection, services, or network elements in accordance with 47 U.S.C. 252(d), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and provide a schedule for implementation of the terms and conditions by the parties to the agreement.

- (l) A commission arbitration award shall be issued not later than nine months after the date on which the local exchange carrier received the request for interconnection pursuant to 47 U.S.C. 252(b)(4)(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (5) Within thirty calendar days after the issuance of the arbitration award, the parties shall file their entire interconnection agreement, consistent with the commission's arbitration award, for commission review. A complete interconnection agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement, including all separate agreements covering such services or network elements.
- (6) If the parties are unable to agree on an entire interconnection agreement, within thirty calendar days after the arbitration award is issued, each party shall file for commission review its version of the language that should be used in a commission-approved interconnection agreement. Unless otherwise authorized by the commission, no comments addressing disputed language filed under this provision will be entertained. The commission will select the competing language that most closely reflects the commission's award.
- (7) Parties to the arbitration may seek extension of any of the deadlines outlined in this rule by the mutual agreement of the parties and the arbitration panel.

(H) Commission review

Unless otherwise determined by the commission, the agreement shall be deemed approved on the thirty-first calendar day.

- (I) Nothing in these rules precludes the filing of a voluntarily negotiated interconnection agreement at any time.
- (J) If the commission rejects a voluntary agreement resulting from negotiation or mediation, or an agreement arrived at by the arbitration process, the parties may file within thirty calendar days an application for rehearing for the commission's consideration. Alternatively, the parties may resubmit the agreement for commission approval within thirty calendar days following rejection if the parties have remedied the deficiencies found by the commission in its order.

(K) Confidentiality

The commission will treat information determined by the commission to be proprietary and confidential which is received during the mediation, negotiation, and/or arbitration process as confidential. The parties to the mediation, negotiation, and/or arbitration process are expected to negotiate appropriate protective orders for the exchange of information deemed to be proprietary. The commission's procedures concerning proprietary information contained in rule 4901-1-24 of the Administrative Code, shall govern the treatment of confidential and proprietary information.

(L) Waiver

- (1) Notwithstanding any provision in these rules, the mediator, arbitration panel, or the commission may permit variance from these rules.
- (2) The commission retains continuing jurisdiction and will maintain regulatory oversight over all approved interconnection agreements.

(M) Notice of approved interconnection agreements

All approved interconnection agreements may be obtained from the commission's docketing division or electronically by subscribing to a personal daily distribution list at the commission website.

4901:1-7-10 Mediation for carrier-to-carrier disputes.

- (A) The mediation procedure in this rule is available for pending formal complaints between telephone companies. Any telephone company involved in a pending formal carrier-to-carrier complaint may ask the commission to mediate that matter. This rule is not intended to supersede any existing alternative dispute resolution provisions in approved interconnection agreements. These provisions are not intended to alter or diminish the commission's (or its staff's) authority to conduct investigations and to take remedial action when deemed necessary. This rule is not intended to alter or diminish the commission's (or its staff's) dispute resolution procedures for informal disputes.
- (B) Mediation shall have the same meaning as that set forth in paragraph (B)(1) of rule 4901:1-7-08 of the Administrative Code.

- (C) The mediation process shall be the same as that set forth in paragraphs (B)(2) to (B)(8) of rule 4901:1-7-08 of the Administrative Code.

4901:1-7-11 Collocation.

- (A) If collocation is the requested method of interconnection, the incumbent local exchange carrier (ILEC) shall provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at its premises. If upon demonstration by an ILEC and a determination by the commission that physical collocation is not practical for technical reasons, or because of space limitations, then the ILEC shall provide virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises, to the extent it is technically feasible. Such demonstration shall include, but not be limited to, the provision of detailed floor plans or diagrams of such premises to the commission. The commission determination shall be performed on a case-by-case basis.
- (B) ILECs shall provide virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises if requested by the interconnecting telephone company, even if the ILEC has floor space available for physical collocation, to the extent it is technically feasible.
- (C) Collocation shall be provided pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to 47 C.F.R. 51.321 and 51.323, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and consistent with the commission's policies and decisions.
- (D) In the event collocation fact-specific issues have not been addressed by the federal communications commission rules, the commission will determine such collocation issues on a case-by-case basis due to the fact that collocation is a very case- and fact-specific issue.

4901:1-7-12 Compensation for the transport and termination of non-access telecommunications traffic.

- (A) Compensation principles

- (1) Reciprocal compensation

- (a) All telephone companies shall have the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic pursuant to 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code **regardless of the network technology underlying the networks' interconnection.**
- (b) Transport is the transmission, and any necessary tandem switching, of **non-access** telecommunications traffic subject to 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, from the interconnection point between the two telephone companies to the terminating telephone company's end office switch that directly serves the called party, or equivalent facility provided by a telephone company other than an incumbent local exchange telephone company (ILEC).
- (c) Termination is the switching of the **non-access** telecommunications traffic at the terminating telephone company's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(2) Eligibility

Telephone companies shall be entitled to compensation for the use of network facilities they own or obtain by leasing from an ILEC (i.e., through purchasing unbundled network elements) to provide transport and terminate **non-access** telecommunications traffic originated on the network facilities of other telephone companies. Nonfacilities-based, local exchange carriers (LECs) are not eligible for the transport and termination of **non-access** telecommunications traffic compensation.

~~(3) Internet service provider (ISP) traffic~~

~~Compensation for the transport and termination of ISP traffic shall be addressed in arbitration cases, until the commission or the federal communications commission otherwise establishes a generic policy.~~

(B) Traffic measurement and identification

- (1) All telephone companies exchanging **non-access** reciprocal compensation traffic and switched access **reciprocal compensation** traffic shall measure minutes-of-use for compensation purposes ~~if technically and economically feasible, unless they mutually agree to a different arrangement in an~~ **interconnection**

agreement. However, ~~telephone companies that are unable to measure traffic terminating on their network may use an allocation factor between the types of traffic in order to bill the originating telephone company. All telephone companies shall be required to maintain such records of traffic measurement, which will be subject to audits for validation of traffic jurisdiction upon request of the interconnecting telephone company. Extended area service (EAS) trunks should only be used to carry the originally intended local traffic unless the LECs on both ends of the EAS trunks mutually agree otherwise. The commission, at its discretion in an arbitration proceeding, may require the interconnecting telephone companies to use separate dedicated trunk groups for reciprocal compensation, intraLATA switched access, and interLATA switched access traffic transport.~~

- (2) All telephone companies exchanging **telecommunications** traffic, where technically and economically feasible, as the provider of originating or transiting intrastate **telecommunications** traffic that is terminated on the network of another telephone company, shall comply with the **signaling information delivery requirements outlined in 47 C.F.R. 64.1601(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.** This obligation is applicable to all telephone companies exchanging telecommunications traffic regardless of the network technology utilized by the telephone company to transport or terminate that traffic.:
- (a) ~~For originating calls, transmit the telephone number of the party originating the call without alteration in the network signaling information.~~
- (b) ~~For forwarded calls, transmit the telephone number of the party originating the call, to the extent such information has been provided by the originating telephone company, without alteration in the network signaling information.~~
- (c) ~~For forwarded calls, the transiting telephone company is not responsible if the originating telephone company did not include the network signaling information.~~

(C) Traffic subject to **non-access** reciprocal compensation

- (1) Telecommunications traffic exchanged between LECs

As a LEC establishes its own local calling area(s), the perimeter of the local calling area of the ILEC with which the LEC is requesting to establish a non-

access reciprocal compensation arrangement shall constitute the demarcation for differentiating **non-access** reciprocal compensation traffic versus switched access reciprocal compensation traffic for the purpose of the compensation arrangement. Any call originating and terminating within the boundary of such ILEC local calling area shall be subject to **non-access** reciprocal compensation. The local calling area of the ILEC shall include non-optional EAS approved by the commission while excluding optional EAS arrangements.

- (2) Telecommunications traffic exchanged between a LEC and a **wireless commercial mobile radio service** provider that, at the beginning of the call, originates and terminates within the same major trading area as defined in 47 C.F.R. 24.202(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, shall be subject to **non-access** reciprocal compensation.
- (3) Telecommunications traffic exchanged between a LEC and another telephone company in time division multiplexing (TDM) format that originates and/or terminates in internet protocol (IP) format and that otherwise meets the definitions in paragraphs (c)(1) or (c)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires internet protocol compatible customer premises equipment.

(D) **Non-access reciprocal compensation arrangements**

- (1) Rates, terms, and conditions for the transport and termination of **non-access** reciprocal compensation traffic shall be established through either negotiated or arbitrated agreements. An ILEC's rates for transport and termination of **non-access** reciprocal compensation traffic shall be established, at the commission's discretion in an arbitration proceeding, on the basis of one of the following:
 - (a) The forward-looking economic costs of such offerings, using a cost study pursuant to rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code. Any rate established pursuant to this provision shall be superseded by the transition process set forth in 47 C.F.R. 51.705(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
 - ~~(b) Interim rates as provided in rule 4901:1-7-18 of the Administrative Code.~~
 - (be) A bill and keep arrangement pursuant to, as provided in paragraph (D)(3) of this rule 47 C.F.R. 51.713, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code

(2) Symmetrical **non-access** reciprocal compensation

- (a) For purposes of this section, symmetrical rates are rates that a telephone company assesses upon an ILEC for transport and termination of **non-access** reciprocal compensation traffic equal to the rates that the ILEC assesses upon the telephone company for the same services.
- (b) Rates for transport and termination of **non-access** reciprocal compensation traffic shall be symmetrical unless the non-ILEC telephone company (or the smaller of two ILECs) proves to the commission, on the basis of a forward-looking economic cost study pursuant to rule 4901:1-7-19 of the Administrative Code, that its forward-looking costs for its network exceed the costs incurred by the ILEC (or the larger ILEC), and that justifies a higher rate.
- (c) If both parties to the compensation arrangement are ILECs, symmetrical rates for transport and termination of **non-access** reciprocal compensation traffic shall be based on the larger telephone company's forward-looking costs, unless the parties voluntarily agree to different rates.
- (d) If neither party to the compensation arrangement is an ILEC, symmetrical rates for transport and termination of **non-access** reciprocal compensation traffic shall not exceed the highest tandem interconnection total element long run incremental cost-based rate charged by the largest ILEC in the state, unless the parties voluntarily agree to different rates.
- (e) The commission may establish symmetrical transport and termination rates for **non-access** reciprocal compensation traffic that vary according to whether this traffic is routed through a tandem switch or directly to an end office switch.
 - (i) Where the telephone company interconnects at the ILEC's tandem office and the switch of the telephone company serves a geographical area comparable to the area served by that ILEC's tandem switch, the telephone company is eligible for the tandem interconnection rate for the transport and termination of **non-access** reciprocal compensation traffic over this tandem interconnection facility.

- (ii) Where the telephone company interconnects at the ILEC's end office, regardless of the geographical area served by the telephone company's switch, the telephone company is eligible for the end office termination rate only for the transport and termination of **non-access** reciprocal compensation traffic over this end office interconnection facility.

(3) Bill and keep

- ~~(a) Bill and keep arrangements are those agreements in which neither of the two interconnecting telephone companies charge the other for the termination of reciprocal compensation traffic that originates on the other telephone company's network. A negotiated or arbitrated interconnection agreement between telephone companies may employ bill and keep as a method of compensation for the transport and termination of reciprocal compensation traffic.~~
 - ~~(b) Nothing in these rules precludes the commission from presuming that the amount of reciprocal compensation traffic from one network to the other is roughly balanced with the amount of reciprocal compensation traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.~~
 - ~~(c) The commission, at its discretion, may adopt specific thresholds for determining when reciprocal compensation traffic is roughly balanced, and include provisions for compensation obligations if traffic becomes significantly out of balance based on a showing that the traffic flows are inconsistent with the thresholds adopted by the commission.~~
- (3) Transport and termination for non-access telecommunications traffic exchanged between a local exchange carrier and a wireless service provider shall be pursuant to a bill -and- keep arrangement, as provided in C.F.R. 51.713, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.**

(4) Rate structure

- (a) Rates for transport and termination of **non-access** reciprocal compensation traffic shall be structured consistent with the manner that telephone companies incur those costs pursuant to paragraph (B) of rule 4901:1-7-17 of the Administrative Code.
- (b) LECs shall offer flat-rate compensation to other telephone companies for dedicated facilities purchased for the transport of **non-access** reciprocal compensation traffic.
- (c) The rate of a telephone company providing transmission facilities dedicated to the transmission of **non-access** reciprocal compensation traffic between two telephone companies' networks shall recover only the costs of the portion of that trunk capacity used by an interconnecting telephone company to send traffic that will terminate on the providing telephone company's network. Such proportion may be measured during peak periods.
- (d) **Non-access reciprocal compensation for telecommunication traffic exchanged between rate-of-return regulated rural telephone company and wireless service provider shall be set pursuant to C.F.R. 51.709(c), effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.**
- ~~(E) LECs may block calls originated to and/or terminated from another telephone company that has not requested an interconnection agreement with the LEC for the establishment of reciprocal compensation arrangement for the transport and termination of telecommunications traffic, and has not been responsive to a request for interconnection for the establishment of reciprocal compensation arrangement for the transport and termination of telecommunications traffic, in accordance with 47 U.S.C. 251(a)(1) and 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.~~
- (EF) This section shall not be construed to preclude telephone companies from negotiating and voluntarily agreeing to other interconnection and compensation arrangements.

4901:1-7-13 Transit traffic compensation.

- (A) Transit traffic is traffic that originates on one telephone company's network, terminates on a second telephone company's network, and is transmitted using an intermediate third telephone company(s)'s network facilities.
- (B) The intermediate telephone company(s) carrying traffic originating and terminating on other telephone company's networks shall be compensated for the use of its (their) network facilities.
- (C) An intermediate telephone company may not refuse to carry transit traffic if:
 - (1) It is appropriately compensated for the use of its network facilities necessary to carry the transit traffic.
 - (2) The originating and terminating telephone companies have a compensation agreement in place with the intermediate telephone company that sets the rates, terms, and conditions for the compensation of such transit traffic.
- (D) The intermediate telephone company(s) must be compensated at the intermediate telephone company(s)'s total element long run incremental cost (TELRIC) based transit traffic compensation rates. Until such time as the commission approves telephone company-specific TELRIC-based transit traffic compensation rates, an intermediate telephone company(s) should be compensated, on an interim basis, at its (their) tariffed switched access rates subject to a true up of these rates.
- (E) This section shall not be construed to preclude telephone companies from negotiating other transit traffic interconnection and compensation arrangements.
- (F) The originating and terminating telephone companies in a transit traffic arrangement are both obligated to establish a transport and termination agreement between them pursuant to 47 U.S.C. 251(b)(5) and 251(a)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

4901:1-7-14 Compensation for intrastate switched access reciprocal compensation 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) and CLEC intrastate switched access reciprocal compensation tariffs, including all rates, terms, and conditions established pursuant to case nos. 83-464-TP-COI and 00-127-TP-COI, shall be capped used by ILECs for compensation for termination and origination of switched access telecommunications traffic originated from and/or terminated by other telephone companies at the December 29, 2011, level -until the commission rules otherwise. The exception to this capping requirement of originating intrastate switched access reciprocal compensation shall be to those ILECs regulated on a rate-of-return basis by the Federal Communications Commission. Any change in the ILEC or CLEC intrastate switched access reciprocal compensation tariffs shall be filed as an ATA case and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-058 of the Administrative Code.~~

(C) The prevailing ILEC and CLEC terminating intrastate switched access reciprocal compensation rates established pursuant to case nos. 83-464-TP-COI and 00-127-TP-COI, shall be transitioned to a default bill-and-keep compensation consistent with 47 C.F.R. 51.903-913, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

- (D) When filing for certification under rule 4901:1-6-0810 of the Administrative Code, facilities-based ~~competitive local exchange carriers (CLEC)~~ shall tariff the rates, terms, and conditions for **switched access reciprocal** compensation for the termination and origination of intrastate switched access traffic originated and/or terminated by other telephone companies.
- (ED) A facilities-based CLEC **filing for certification**, an ILEC's affiliate **filing for holding** a CLEC certification, or an ILEC **proposing to operate** outside its ILEC service area, shall ~~establish~~ **their initial access reciprocal compensation** rates, at a level that does not exceed the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access reciprocal compensation traffic, unless the CLEC is a rural CLEC competing with a nonrural ILEC and its rates are capped at national exchange carrier association access reciprocal compensation rates. Once initial access reciprocal compensation rates are established, it shall be subject to requirements set forth in paragraphs (B) and (C) of this rule.
- (FE) A facilities-based CLEC, an ILEC's affiliate CLEC, or an ILEC operating outside its ILEC service area's ~~carrier-to-carrier intrastate switched~~ intrastate switched access reciprocal compensation tariff not filed as part of its certification process pursuant to rule 4901:1-6-10 **4901:1-6-8** 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 4901:1-6-058 of the Administrative Code and requirements set forth in paragraph (E) of this rule.

4901:1-7-15 Meet point billing (MPB).

- (A) MPB arrangements shall be used in billing for compensation for jointly provisioned switched access service to another carrier by more than one local exchange carrier (LEC), similar to MPB arrangements currently used by the incumbent local exchange carriers.
- (B) LECs may use MPB arrangements for compensation of other types of traffic exchanged between them.
- (C) Under MPB compensation arrangements, the meet point can be any technically feasible point of interconnection pursuant to paragraph (A)(6) of rule 4901:1-7-06 of the Administrative Code.

4901:1-7-16 Unbundled network elements (UNE).

General unbundling requirements

- (A) Each incumbent local exchange carrier (ILEC) shall have the duty to provide, to any requesting telephone company for the provision of telecommunications service, nondiscriminatory access to network elements, pursuant to 47 U.S.C. 251(c), and 251(d)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, on an unbundled basis at any technically feasible point consistent with 47 C.F.R. 51.307-321, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (B) Each ILEC shall provide UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to 47 U.S.C. 251(c)(3) and 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.
- (C) Unbundled network element rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a request for interconnection pursuant to rule 4901:1-7-06 of the Administrative Code, or through arbitration pursuant to rule 4901:1-7-09 of the Administrative Code.
- (D) Unbundled network elements shall be priced at cost-based rates pursuant to the pricing standards set forth in rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code.

4901:1-7-17 Carrier-to-carrier pricing.

(A) General principles

- (1) These standards apply to pricing of interconnection, unbundled network elements, methods of obtaining interconnection and access to unbundled network elements (including collocation), and reciprocal compensation pursuant to 47 U.S.C. 251(c) and 251(d)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. All of these provisions shall be referred to as "elements" for the purpose of this rule.

- (2) An incumbent local exchange carrier's (ILEC's) rates for each element it offers shall comply with the rate structure standards as described in paragraph (B) of this rule.
- (3) The commission, at its discretion in an arbitration proceeding, shall set the ILEC's rates for each element it offers by either:
 - (a) Utilizing interim rates that are based on the best information available to the commission about the ILEC's forward-looking economic costs. Such interim rates shall be subject to a true up pursuant to paragraph (A)(4) of this rule.
 - (b) Pursuant to the forward-looking economic cost-based pricing methodology described in rule 4901:1-7-19 of the Administrative Code.
- (4) The interim rate(s) for an element(s) shall cease to be in effect once the commission determines rates based on forward-looking economic costs pursuant to rule 4901:1-7-19 of the Administrative Code, submitted by the ILEC and approved by the commission. If the interim rate for an element is different from the rate established by the commission pursuant to rule 4901:1-7-19 of the Administrative Code, the involved telephone companies shall make adjustments to the past rate charged for that element which allow each telephone company to be charged at a rate level it would have been charged had the interim element rate equaled the rate later established by the commission pursuant to rule 4901:1-7-19 of the Administrative Code. The involved telephone companies may consider the financial impact of the true up and negotiate the period of time over which the true up takes place.
- (5) Any ILEC offering of a volume discount, term discount, or geographically deaveraged price of an element, shall be made available on a nondiscriminatory basis to all telephone companies who meet the discount or the deaveraging criteria.
- (6) The ILEC shall prove to the commission's satisfaction that the price for each element provided to a requesting telephone company does not exceed the forward-looking economic cost per unit of providing that element unless otherwise negotiated.
- (7) The rate that an ILEC assesses for elements shall not vary on the basis of the class of customer served by the requesting telephone company, or on the type

of services that the requesting telephone company purchasing such elements uses them to provide.

(B) Rate structure

- (1) The following rate structure standards shall apply to rates set by the commission in arbitration proceedings pursuant to rule 4901:1-7-09 of the Administrative Code. Local exchange carriers (LECs) are not precluded from negotiating alternative rates or rate structures.

- (2) General rate structure standards

The following rate structure standards shall apply regardless of whether the price of an element is set pursuant to a forward-looking cost study or the interim rate approach.

- (a) Rates for an element shall be structured consistent with the manner in which the costs of providing that element are incurred.
 - (i) Recurring costs shall be recovered through recurring charges, unless an ILEC can prove to the commission's satisfaction that such recurring costs are de minimus when the costs of administering the recurring charges would be excessive in relation to the amount of the recurring costs.
 - (ii) An ILEC may recover the forward-looking nonrecurring economic costs through recurring charges allocated among requesting telephone companies and spread over a reasonable period of time. The commission on a case-by-case basis shall evaluate the reasonableness of such cost recovery mechanisms.
- (b) The costs of dedicated facilities shall be recovered through flat-rated charges.
- (c) The costs of shared facilities shall be recovered in a manner that efficiently apportions those costs among users. Costs of shared facilities may be recovered through either usage sensitive charges or capacity-based, flat-rated charges. The commission shall determine on a case-by-case basis the reasonableness of the proposed cost recovery mechanism.

- (d) An ILEC may establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences. To establish geographically-deaveraged rates, the ILEC may use its existing density-related zone plans established pursuant to 47 C.F.R. 69.123, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, other cost-related zone plans established pursuant to state law, or another cost-related zone plan that creates a minimum of three cost-related zones approved by the commission.

(3) Rate structure for specific rate elements

The following element-specific rate structure standards shall apply in addition to the standards set forth in paragraph (B)(2) of this rule.

- (a) Local loop costs shall be recovered through flat-rated charges.
- (b) Dedicated transmission link costs shall be recovered through flat-rated charges, except for the purpose of establishing a reciprocal compensation rate for providing transmission facilities dedicated to the transmission of traffic between two carriers' networks, which is provided pursuant to paragraph (D)(4)(c) of rule 4901:1-7-12 of the Administrative Code.

4901:1-7-18 Interim rates for forward-looking economic prices.

- (A) Interim rates may be used by the commission in setting prices while arbitrating disputed issues pursuant to rule 4901:1-7-9 of the Administrative Code.
- (B) Interim rates shall be set by the commission when it determines that it does not have sufficient time to review cost information provided by an incumbent local exchange carrier or when it appears that, there may be significant concerns with the cost studies from the commission's cursory review.

4901:1-7-19 Forward-looking economic costs.

(A) The forward-looking, economic, cost-based price of an element shall be set at a level that allows the providing carrier to recover the sum of the total element long-run incremental cost (TELRIC) of the element and a reasonable allocation of the forward-looking, joint and common costs.

(B) TELRIC

(1) Principal

The TELRIC of an element is the forward-looking economic cost over the long-run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated while holding all other products' volumes constant.

(2) Study period

The commission will consider a cost study period of five years to be reasonable. An incumbent local exchange carrier (ILEC) shall have the burden of proof, to the commission's satisfaction, that such study period would not be reasonable for a specific element.

(3) Technology

The TELRIC of an element shall be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the ILEC's wire centers.

(4) Cost of capital

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity) reflecting the risks of a competitive market, that includes a reasonable level of profit. An ILEC may use an unbundled network element-specific, forward-looking, cost of capital in calculating the TELRIC-based cost for that unbundled network element.

(5) Depreciation

The TELRIC of an element shall be calculated using the economic depreciation rates that reflect the forward-looking economic lives of the equipment and the economic value of an asset. In doing so, an ILEC may accelerate recovery of the initial capital outlay for an asset over its life to reflect the anticipated decline in its value.

(6) Federal, state, and local income taxes

- (a) Federal, state, and local income tax expenses shall be determined based on the TELRIC.
- (b) Since federal, state, and local taxes are applicable, recognition shall be given to the "tax-on-tax" situation that results from the deductibility of state and local tax when federal taxes are paid.

(7) Inflation

TELRIC studies shall reflect costs that are expected to be incurred during the study period. Such costs shall be projected to their anticipated level over the study period by using prices in supplier contracts or an appropriate index of future cost, such as supplier estimates of price changes, indices developed from labor contracts, or other relevant indices.

(8) Investment development

(a) Material investment

- (i) The development of the material component of investment shall begin with the current vendor price(s) for the hardware and software resources required to provide the element, projected over the study period as described above.
- (ii) Other components of material investment shall include inventory, supply expenses, and sales taxes.
- (iii) The sales tax component of investment shall be calculated by applying a sales tax factor if applicable. The factor shall reflect taxes imposed by

state and local taxing bodies on material purchases. It shall be applied to the material and inventory components.

- (iv) The supply component shall include the expense incurred by the ILEC for storage, inventory, and delivery of material.

(b) Labor investment

There are two major components of labor investment, vendor-related and ILEC-related.

- (i) Vendor-related labor investment shall include vendor-provided installation and engineering.
- (ii) ILEC-related labor investment may be developed based on account averages or from estimates of product-specific plant engineering and installation hours.
- (iii) Total labor costs shall be computed by multiplying the account average or product specific work times by the appropriate labor rate.
- (iv) Hourly labor rates include the operational wages, benefits, paid absence, and, if applicable, tools and miscellaneous expenses.

(9) Fill factors

The investment developed above shall be adjusted to reflect reasonably accurate "fill factors". Fill factors are the proportion of a facility that will be filled with network usage during the study period. The ILEC shall have the burden to justify the reasonableness of the fill factors used in its TELRIC studies.

(10) Maintenance

Maintenance costs are incurred in order to keep equipment resources in usable condition.

- (a) Included in this classification are: direct supervision; engineering associated with maintenance work; labor and material costs incurred in the upkeep of plant; rearrangements and changes of plant; training of maintenance forces;

testing of equipment and facilities; tool expenses; and miscellaneous expenses.

- (b) The specific maintenance cost estimates associated with the element in question or investment-related annual maintenance factors may be applied to arrive at an annual maintenance cost.
 - (c) The factor shall be specific to the investment and expense accounts associated with the element and developed from the most current data reasonably available to the ILEC.
- (11) The forward-looking, economic, cost per unit of an element shall equal the forward-looking, economic, cost of the element, divided by a reasonable projection of the sum of the total number of units of that element that the ILEC is likely to provide to requesting telephone companies and the total number of units of that element that the ILEC itself is likely to use in offering its own services, during the study period.
- (12) In the determination of the total number of units:
- (a) If the ILEC offers an element on a flat-rate basis, the number of units shall be defined by the ILEC as the discrete number of elements that the ILEC uses or provides (e.g., number of loops or number of ports).
 - (b) If the ILEC offers an element on a usage-sensitive basis, the number of units shall be defined by the ILEC as the unit of measurement of the usage (e.g., number of minutes-of-use or database queries).
- (13) The TELRIC of an element shall reflect any cost-based volume discount, term discount, and/or geographic-deaveraging the ILEC plans to offer.

(C) Forward-looking, joint and common costs

- (1) Forward-looking common costs are economic costs incurred by the ILEC in providing all elements and services provided by the ILEC that cannot be attributed directly to an individual element or service.
- (2) Forward-looking joint costs are those forward-looking costs that are common to only a subset of the elements or services provided by the ILEC.

(3) Reasonable allocation of forward-looking, joint and common costs:

- (a) Forward-looking joint costs which are common to only a subset of the elements or services provided by the ILEC, shall be allocated to that subset, and should then be allocated among the individual elements or services in that subset, based upon measures of utilization, including such measures as: number of circuits, minutes-of-use, and bandwidth. The commission shall evaluate the reasonableness of the joint cost allocation methodology on a case-by-case basis.
- (b) Forward-looking common costs shall be allocated among elements and services in a reasonable manner. The ILEC may allocate forward-looking common costs using a fixed allocator as a markup over the sum of the TELRIC and the allocated forward-looking joint cost allocated to such element. The ILEC shall have the burden of proving that the fixed allocator permits only reasonable recovery of any forward-looking common costs.

4901:1-7-20 Cost study requirements.

- (A) When a local exchange carrier (LEC) submits a cost study to the commission staff, it must simultaneously submit a complete set of supporting work papers and source documents.
- (B) The work papers must clearly and logically present all data used in developing the estimate and provide a narrative explanation of all formulas or algorithms applied to these data. These work papers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions.
- (C) The work papers must clearly set forth all significant assumptions and identify all source documents used in preparing the cost estimate, including the technology being used in providing the element.
- (D) The work papers must be organized so that a person unfamiliar with the study will be able to work from the initial investment, expense, and demand data to the final cost estimate. Every number used in developing the study must be clearly identified in the work papers as to what it represents. Further, the source should be clearly identifiable and readily available, if not included with the work papers.

(E) Any input expressed as a "dollars per minute," "dollars per foot," "dollars per loop," "dollars per port," and the like must be traceable back to the original source documents containing the number of dollars, minutes, feet, loops, ports, and the like from which these figures were calculated.

(F) ~~To the extent practicable, a~~ All data and work papers must be provided in electronic format.

4901:1-7-21 Resale.

(A) Resale provisioning

- (1) All local exchange carriers (LECs) must make all telecommunications services available for resale by any LEC and shall not contain unreasonable, discriminatory, or anti-competitive conditions, or limitations.
- (2) All incumbent local exchange carriers (ILECs) must make available for resale at wholesale rates any retail telecommunication services that the ILEC provides at retail to subscribers who are not telephone companies.
- (3) Each ILEC shall be required to provide nondiscriminatory, automated operational support systems. Such systems shall enable other LECs reselling the ILEC's retail telecommunications services to preorder and order service, installation, repair, and number assignment; monitor network status; and bill for local service. Such support systems shall include, but not be limited to:
 - (a) Preordering and ordering functionalities for processing customer service orders.
 - (b) Provisioning requirements to ensure electronic transmission of data to the LEC providing telecommunications services for resale, as well as order and service completion confirmation.
 - (c) Repair and maintenance requirements.
- (4) ILECs are required to provide branding of operator, call completion, or directory assistance services offered for resale.

(B) Resale of retail promotions

- (1) Promotions of recurring charges for retail services offered by an ILEC lasting more than ninety calendar days, as measured on a per customer basis in a twelve-month time frame, or a promotion of the comparable cash value offered by a ILEC shall be made available for resale at the wholesale rates.
- (2) Promotions of recurring charges for retail services offered by a competitive local exchange carrier (CLEC) lasting more than ninety calendar days, as measured on a per customer basis in a twelve-month time frame, or a promotion of the comparable cash value offered by a CLEC shall be made available for resale.

(C) Resale of contracts

- (1) All LECs must make available for resale all retail telecommunication service contracts. The contract is available for resale only in its entirety, and is available to similarly situated customers other than the same customer under the LEC contract.
- (2) ILECs must make these contracts available at the wholesale rate discussed in paragraph (E) of this rule.
- (3) LECs may, subject to commission approval, place reasonable restrictions on the resale of contracts including the resale of residential services to business customers.

(D) Resale of lifeline

LECs purchasing lifeline services for resale may only resell those services to qualifying lifeline customers and must pass on to the customer the full amount of the applicable lifeline discount. The LEC purchasing lifeline services for resale is responsible for certification and validation of the eligibility of the lifeline customers it serves. The ILEC must sell lifeline service to that reseller at the wholesale rate established for basic local exchange service, less any lifeline discount for which the ILEC is eligible to be reimbursed by existing federal and/or state funding mechanisms.

(E) Resale pricing

- (1) ILEC's retail telecommunications services available for resale to any telephone company shall be priced on a wholesale basis. Wholesale prices shall be determined on the basis of the retail rates charged to customers for the telecommunications service under consideration, excluding the portions thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the ILEC.
- (2) The commission, at its discretion, may establish the wholesale rates utilizing either:
 - (a) Interim wholesale rates that are based on the best information available to the commission, about the ILEC avoided costs. In that case, the commission may establish a single discount percentage rate that shall be used to establish interim wholesale rates for each telecommunications service. Such interim rates may be subject to a true up consistent with principles outlined in paragraph (A)(4) of rule 4901:1-7-17 of the Administrative Code.
 - (b) Rates that are equal to the ILEC's existing retail rates for the telecommunications service, less avoided retail costs through the commission's review and approval of the ILEC's avoided cost study.
- (3) Avoided retail costs for large ILECs shall be those costs that will be avoided when an ILEC provides a telecommunications service for resale at wholesale rates to a requesting telephone company.
 - (a) For the ILECs that are designated as class A companies pursuant to 47 C.F.R. 32.11, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, except as provided in paragraph (E)(3)(d) of this rule, the avoided retail costs shall:
 - (i) Include, as direct costs, the costs recorded in uniform system of accounts (USOA) account numbers 5301 (telecommunications uncollectibles) in proportion to the avoided direct expenses, 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622 (number services), and 6623 (customer services).

- (ii) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses), 6711, 6712, 6721-6728 (corporate operations expenses).
 - (iii) Not include plant-specific expenses and plant nonspecific expenses other than general support expenses (6110-6116 and 6210-6565).
- (b) Costs included in accounts 6611-6613 and 6621-6623 described in paragraph (E)(3)(a)(i) of this rule, may be included in wholesale rates only to the extent that the ILEC proves to the commission that specific costs in these accounts will be incurred and are not avoidable with respect to the services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services.
 - (c) Costs included in accounts 6110-6116 and 6210-6565 described in paragraph (E)(3)(a)(iii) of this rule, may be treated as avoided retail costs, and excluded from the retail rates, only to the extent that a party proves to the commission that specific costs in these accounts can reasonably be avoided when an ILEC provides a telecommunications service for resale to a requesting carrier.
 - (d) For the ILECs that are designated as class B companies under 47 C.F.R. 32.11, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of specific USOA accounts listed in paragraphs (E)(3)(a) to (E)(3)(c) of this rule.
- (4) Avoided retail costs for small ILECs will be determined on a case-by-case basis.
 - (5) An ILEC may, upon commission approval, set wholesale discounts that are not uniform provided the ILEC demonstrates to the commission that those rates are set on the basis of an appropriate avoided-cost study.
 - (6) The ILEC shall develop a two-pronged wholesale discount, one discount that applies when the reseller purchases operator services and directory assistance, and a second discount when these services are not purchased in their entirety.
- (F) When an ILEC provides exchange services to a requesting carrier at wholesale rates for resale, the ILEC shall continue to assess the intrastate access charges provided in

its intrastate tariffs upon the requesting carrier. The ILEC access charges assessed to the requesting carrier must be at the tariffed rate not at an avoided-cost discounted rate.

4901:1-7-22 Customer migration.

(A) Each competitive local exchange carrier (CLEC) shall be required to provide systems to facilitate the migration of customers between local exchange carriers (LECs). Such systems may be manual but must enable another LEC to migrate customers efficiently from that CLEC's network. Such systems shall include, but not be limited to systems required to preorder, order, install, and repair service, and billing for local service. CLEC responses to customer service record requests shall include information sufficient to facilitate customer migration between LECs. For the purposes of this rule, customer service information includes but is not limited to the following:

- | (1) Customer service records – detailed identification of the regulated services to which the customer is subscribed.
- (2) Service completion confirmation – the verification and notification that all tasks associated with a service order have been completed.
- (3) Line loss notification – the notification to a LEC that a customer has initiated a transition to another LEC.
- (4) Completion notices – notice that all work to effect a customer migration has been completed.
- (5) Circuit identification – the manner and system a carrier uses to identify physical circuits under its control, if applicable.
- (6) 911 and directory listings.

(B) Incumbent local exchange carriers (ILECs) are required to provide systems to facilitate the migration of customers between local exchange carriers (LECs) pursuant to 47 C.F.R. 51.319(g), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and consistent with any existing ILEC-specific commission requirement.

- (C) All telephone companies shall use the relevant industry developed standards and timelines, where they exist, or a mutually agreed upon equivalent, for the exchange of customer account information between telephone companies.
- (D) Telephone companies responding to local service requests shall follow industry standards, including North America numbering council timelines. Telephone companies responding to a request for customer service records shall provide such information to the requesting telephone company within two business days.
- (E) No telephone company, having obtained facilities, resources, or information for the purpose of serving a specific customer, shall, upon the receipt of a request to migrate that customer, continue to hold, or fail to release said facilities, resources, or information solely in order to prevent or delay the migration of that customer. In the event of a dispute, the telephone company retaining the facilities, resources, or information carries the burden of proof to demonstrate a valid reason for retaining the facilities, resources, or information in question.
- (F) A telephone company losing its customer shall not use information obtained as a result of the customer migration process to solicit a competing telephone company's customer while the competing telephone company is in the process of obtaining from such telephone company the facilities, resources, or information necessary to serve that same customer.
- (G) No acquiring telephone company shall require, instruct, or advise any new customer to first establish service with, migrate to, or otherwise use transitionally another telephone company, without the consent of such other telephone company, for an interim period of time before becoming a customer of the acquiring telephone company.
- (H) Telephone companies shall submit customer service record requests to the customer's existing telephone company and not to the underlying network provider.

4901:1-7-23 Rights-of-way, poles, ducts, and conduit.

(A) Authorization

- (1) Local exchange carriers (LECs) are subject to all constitutional, statutory, and administrative rights and responsibilities placed upon public utilities for use of public rights-of-way.
- (2) Private rights-of-way for all telephone companies are subject to negotiated agreements with the private property owner, exclusive of eminent domain considerations.
- (3) Telephone companies are prohibited from entering into exclusive use agreements of private building riser space, conduit, and/or closet space.
- (4) The commission reserves the right to require any or all such arrangements between public utilities and private landowners to be submitted to the commission for its review and approval, under section 4905.31 of the Revised Code.

(B) Rates, terms, and conditions

Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and right-of-way shall be established through negotiated arrangements or tariffs. Such access shall be established pursuant to 47 U.S.C. 224; 47 C.F.R. ~~1.1401 to 1.1403~~; 47 C.F.R. 1.1416 to 1.1422~~18~~; and the formulas in 47 C.F.R. 1.1409(e), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. The commission will address, on a case-by-case basis, any fact-specific issues related to access to poles, ducts, conduits, and right-of-way. Any change in the public utility's tariffed rates, terms, and conditions for access to poles, ducts, conduits, or right-of-way shall be filed in a UNC proceeding.

(C) Coordination

LECs shall coordinate their right-of-way construction activity with the affected municipalities and landowners. Nothing in this section is intended to abridge the legal rights and obligations of municipalities and landowners.

4901:1-7-24 Local number portability (LNP).

- (A) Telephone companies do not have a proprietary interest in the customer's telephone number. Customers must have the ability to retain the same telephone number as they change from one telephone company to another at the same location.
- (B) All telephone companies must provide permanent LNP pursuant to 47 C.F.R. 52.21-52.363, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

4901:1-7-25 Number optimization.

All number holding telephone companies, including ~~commercial mobile radio-wireless~~ service providers, must adhere to the following requirements:

- (A) Upon request, provide copies of all NXX code requests to the North American numbering plan administrator (NANPA) or thousands block requests to the pooling administrator to the chief of the telecommunications division of the utilities department of the commission.
- (B) Initial and growth NXX code or thousands block requests must comply with applicable federal regulation.
- (C) The telephone company must obtain NXX codes from NANPA or thousands blocks from the pooling administrator only for those areas where it is certified and plans to activate service within six months. If a telephone company is unable to meet the six-month deadline for placing a code or thousands block into service by returning a part 4 form to NANPA or to the pooling administrator, then further action regarding this code or thousands block is the responsibility of the commission and the telephone company.
- (D) The telephone company will adopt all current and future number resource optimization measures set forth by the federal communications commission and the commission orders.

4901:1-7-26 Competition safeguards.

(A) Code of conduct

(A1) Disclosure of information

(1a) Definitions

(ai) 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 ~~on December 10, 2007~~ in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(bi) 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. ~~on December 10, 2007.~~

(c) For purposes of this rule "customer-specific information" shall be defined as any information specifically pertaining to a customer that is not information included in the definitions set forth in subdivisions (A)(1)(a) and (A)(1)(b) of this rule.

(2b) Customer proprietary network information (CPNI)

(ai) The use of CPNI by any telephone company must comply with 47 U.S.C. 222, and 47 C.F.R. 64.2001 to 64.2011, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code ~~on December 10, 2007.~~

(bi) 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.

(3e) 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.

(ai) 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.

(bi) This provision does not apply to information subject to a customer request to either release or withhold information.

(42) Records

All telephone companies shall maintain ~~records~~ ~~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 requirements

(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.~~

~~4901:1-7-27~~ — Reporting requirements.

(A) ~~All local exchange carriers (LECs) that report market information to the federal communications commission (FCC) must submit to commission staff the Ohio market information reports, on a statewide basis in the same format and content as filed in the FCC form 477.~~

(B) ~~This LEC market information must be reported on a semi-annual basis and at the same time it is filed with the FCC.~~

4901:1-7-28 — Request for expedited ruling in a carrier-to-carrier complaint.

- (A) ~~This rule establishes procedures pursuant to which a telephone company who files a complaint against another telephone company pursuant to section 4905.26 of the Revised Code, may request an expedited ruling when the dispute directly affects the ability of a telephone company to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element under an interconnection agreement. The attorney examiner has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Unless otherwise determined during the course of the proceeding, the provisions and procedures set forth in section 4905.26 of the Revised Code, and Chapters 4901-1 and 4901-9 of the Administrative Code, shall apply.~~
- (B) ~~Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed under section 4905.26 of the Revised Code. The complaint shall be entitled "complaint and request for expedited ruling." A complaint seeking an expedited ruling shall also state the specific circumstances that make the dispute eligible for an expedited ruling. The complainant shall simultaneously serve a copy of the complaint and request for expedited ruling on the respondent and the chief of the telecommunications section of the legal department by hand delivery or facsimile on the same day as it is filed with the commission.~~
- (C) ~~The respondent shall file a response to the request for expedited ruling within seven calendar days after the filing of the complaint. The respondent shall simultaneously serve a copy of the response on the complainant and the chief of the telecommunications section of the legal department by hand delivery or facsimile on the same day as it is filed with the commission.~~
- (D) ~~After reviewing the complaint and the response, an attorney examiner will determine whether the complaint warrants an expedited ruling. If so, the attorney examiner shall direct the respondent to file its answer and make arrangements for the hearing, which shall commence no later than thirty calendar days after the filing of the complaint. The attorney examiner shall notify the parties, not less than five calendar days before the hearing of the date, time, and location of the hearing. If the attorney examiner determines that the complaint is not eligible for an expedited ruling, the attorney examiner shall so notify the parties within seven calendar days of the filing of the response.~~

~~(E) The attorney examiner may require the parties to file an issues list on or before the commencement of the hearing. The attorney examiner shall require the parties to file their issues list under the same deadline. The issues list shall identify all issues to be addressed, the witness, if any, who will be addressing each issue, a short synopsis of each witness's position on each issue, and a citation to the involved interconnection agreement and any other legal authority that the party believes supports the parties' position.~~

~~(F) The attorney examiner shall draft a written decision on the complaint and schedule the matter for commission consideration within thirty calendar days after the later of: (1) the close of the hearing, or (2) any briefs that are requested to be filed.~~

4901:1-7-279 Local exchange carrier default.

(A) In the event a local exchange carrier (LEC) intends to terminate another LEC's access to its network for nonpayment or any other material default, as defined by an agreement between the LECs, and in the event such termination of service would effectively result in the disconnection of the defaulting LEC's customers from the local telecommunications network without a customer notice, consistent with rule 4901:1-6-0716 of the Administrative Code, the aggrieved LEC shall be required to notify the commission at least ~~twenty-one~~ **fourteen** calendar days in advance of the date it intends to terminate the other LECs' access. Such notice shall be made by e-mail, facsimile, overnight mail, or hand delivery to the defaulting LEC and to the director of the service monitoring and enforcement department, the chief of the telecommunications section of the utilities department, and the chief of the telecommunications section of the legal department.

(B) If it is determined by the commission, that further investigation is warranted or that immediate termination may not be in the public interest, the commission or an attorney examiner may direct the aggrieved LEC to stay the termination for further investigation. This section is not intended to replace any default or dispute resolution provisions contained in an agreement between the LECs. Rather, it is an additional requirement should a default trigger the potential for termination of service(s) from the aggrieved LEC's network.