

**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	)	Case No. 12-922-TP-ORD
Exchange Carrier-to-Carrier Rules	)	

**VERIZON'S COMMENTS**  
**ON PROPOSED CHANGES TO CARRIER-TO-CARRIER RULES**

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services and MCI Communications Services, Inc. d/b/a Verizon Business Services (together, "Verizon") respectfully submit their comments regarding proposed amendments to Chapter 4901:1-7 pursuant to the schedule set forth in the Commission's March 21, 2012 Entry in this case ("Entry").

The proposed amendments are generally appropriate and consistent with the purposes of Section 119.032, O.R.C. and Executive Order 2011-01K. However, a few changes are necessary to avoid conflict with federal law. An overarching problem is that the proposed rules repeatedly reference federal law as of a specific point in time, which could put the Commission in the untenable position of attempting to enforce federal law that has been superseded. In a few other instances, the proposed amendments could be construed to prejudge federal law on matters currently pending before the Federal Communications Commission ("FCC"). Verizon addresses these issues below.

**4901:1-7-02 General Applicability**

Proposed 4901:1-7-02(A) states that each citation to the federal statutes and code of federal regulations would incorporate that citation by reference "as effective on November 30, 2012." While Verizon does not object to the Commission referring to federal law in its rules (as

unnecessary as that may be, given that federal law’s applicability is not contingent upon state administrative rules incorporating it), it is highly problematic to incorporate that law by reference as of a “frozen” date. If the cited federal statutes and regulations are subsequently amended, the Commission would be in the untenable position of attempting to enforce superseded federal laws that have been incorporated into its rules. This is particularly inappropriate given that in the carrier-to-carrier realm, the Commission generally acts under authority delegated to it by federal law, to enforce federal law – not to enforce *outdated* federal law.<sup>1</sup> Similarly, carriers would be in the equally untenable position of being forced to choose whether to violate state or federal law when they conflict because federal law has been amended and the Commission rule has not.

When considering this issue in Case No. 06-1344-TP-ORD, the Commission acknowledged that these concerns are valid, but concluded that the Commission’s waiver process would allow any carrier concerned about a conflict between a commission rule incorporating a superseded federal statute or rule, and the subsequently-amended federal statute or rule, to seek a waiver.<sup>2</sup> However, forcing every carrier to apply for a formal waiver of obligations arising out of an administrative rule’s incorporation of a superseded federal statute or rule is wasteful, unnecessary and wholly inconsistent with the goals of Executive Order 2011-01K (“EO2011-01K”), which the Commission acknowledges requires it to “review its rules to ... *attempt to balance properly the critical objectives of regulation and the cost of compliance by the regulated*

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<sup>1</sup> See, e.g., Section 4927.04, O.R.C., giving the Commission only “such power and jurisdiction as is reasonably necessary for it to perform the obligations authorized by or delegated to it under federal law, including federal regulations, which obligations include performing the acts of a state commission as defined in the ‘Communications Act of 1934,’ 48 Stat. 1064, 47 U.S.C. 153, as amended....”

<sup>2</sup> See Entry on Rehearing, *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD (October 17, 2007) at ¶¶ 45-46. The Commission also cited Section 121.75, O.R.C. as justification for its approach. See Opinion and Order dated August 22, 2007 in Case. No. 06-1344-TP-ORD at p. 8. However, that statute is relevant only if the Commission seeks to incorporate the text of a federal statute or rule into its own rules by reference without actually repeating the federal text within its rule. Here, the Commission is not seeking to incorporate the text of federal law into state law – it intends to note federal laws that apply in their own right, regardless of whether state law “incorporates” them. Moreover, nothing gives the Commission the right to enforce superseded federal laws.

*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.” Entry at 1-2 (emphasis added).*

As Governor Kasich stated in EO2011-01K, “... complying with confusing, duplicative, or ineffective regulations strain[s] [small business] resources and divert effort from job creation and production. In too many cases, Ohio’s regulatory framework has worked against, not with, these small businesses.” *See* EO2011-01K at 1. Governor Kasich continued as follows:

*All of Ohio benefits from regulations that are in the public interest and are enforced properly. Protecting the public is always first and foremost, and regulatory compliance increases when regulations are easier to understand and to follow.*

*... Ohio’s regulatory process should be built on the foundations of transparency, accountability and performance. Government must be held accountable to justify that every regulation in place serves a purpose and is implemented in the most effective manner possible.*

*... [Agencies should] [a]ttempt, in all rules and regulations, to properly balance the critical objectives of the regulation and the cost of compliance by the regulated parties. ... All efforts shall be made to choose the regulation that accomplishes the regulatory objective and is least burdensome on small businesses.*

*Id.* at 1, 3 (emphasis added).

The approach that the Commission has taken in the past is contrary to the Executive Order 2011-01K’s sound goals, and the Commission should take this opportunity to rectify that. To do so, the Commission should simply delete 4901:1-7-02(A) in its entirety and re-letter subsections (B) through (E) as (A) through (D), deleting “... , as effective in paragraph (A) of this rule” from newly re-lettered subsection (A). In addition, the Commission should delete “... , as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code” from the following rules:

4901:1-7-01(J), (N), (P) and (Q)

4901:1-7-04(A), (B) and (D)

4901:1-7-06(A)(1), (A)(4), (A)(5), (A)(6)(f)

4901:1-7-07(A)(1), (A)(3), (D)(1) and (D)(2)

4901:1-7-08

4901:1-7-09(G)(4)(k) and (G)(4) (l)

4901:1-7-11(C)

4901:1-7-12(A)(1)(a), (A)(1)(b), (B)(2), (C)(2), (D)(1)(a), (D)(1)(b), (D)(3) and (D)(4)(d)

4901:1-7-13(F)

4901:1-7-14(A)(1), (C)

4901:1-7-16(A) and (B)

4901:1-7-17(A)(1) and (B)(2)(d)

4901:1-7-21(E)(3)(a) and (E)(3)(d)

4901:1-7-22(B)

4901:1-7-23(B)

4901:1-7-24(B)

4901:1-7-26(A)(1)(a), (A)(1)(b) and (A)(2)(a)

#### **4901:1-7-06 Interconnection**

The proposed rule revisions would add the following language to 4901:1-7-06(A)(1), (A)(2) and (A)(3): “regardless of the network technology underlying the interconnection ...”

The FCC has an open proceeding in which it is considering issues related to interconnection, in which it recently issued a Further Notice of Proposed Rulemaking. That notice raised many questions related to interconnection for voice in IP format, including whether the FCC has the

authority to regulate those interconnection types and what effects regulation would have on investment and broadband deployment. The proposed rule revision could be interpreted to suggest a result before the FCC considers recently filed comments and eventually renders a decision. The proposed rule revision is therefore premature at best, and the Commission should not implement rules that could be read to impose requirements in the IP interconnection realm before the FCC addresses the issue.<sup>3</sup>

To address this concern, Verizon suggests that the Commission replace the phrase “regardless of the network technology underlying the interconnection” with “regardless of the technology used to serve the end user” where the former appears in 4901:1-7-06(A)(1), (A)(2) and (A)(3). This language would preserve the proposed amendments’ intent without usurping the FCC’s authority to decide whether federal law requires IP interconnection for voice.

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

It is questionable that the Commission should retain any carrier-to-carrier compensation rules given that the FCC has now established an exclusive federal regime covering the subject.<sup>4</sup> While the FCC has given state commissions a role in implementing that new federal regime (*see, e.g., FCC Order*, ¶¶ 776, 790, 803, 813, 951, 967), the Commission need not maintain compensation rules that point to federal law; federal law exists independently of the state rules and the Commission remains charged with enforcing federal law.

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<sup>3</sup> For example, Section 4905.042, O.R.C. prohibits the Commission from exercising “any jurisdiction over [advanced services and Internet protocol-enabled services] that is prohibited by, or is inconsistent with its jurisdiction under, federal law, including federal regulations.”

<sup>4</sup> *See generally Connect America Fund, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (“*FCC Order*”). In that order, the FCC adopted “a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC.” *Id.*, ¶ 34.

Should the Commission nevertheless decide to retain 4901:1-7-12, changes are necessary. The undefined term “non-access reciprocal compensation” throughout this section will create confusion. The Commission should add a definition to 4901:1-7-01 that reads as follows:

4901:1-7-01(xx) “Non-Access Reciprocal Compensation” has the meaning set forth in 47 C.F.R. § 51.701(e).

Next, the concern addressed above with respect to 4901:1-7-06 also arises from the proposed amendments to 4901:1-7-12. The proposed revisions suggest inserting the phrase “regardless of the network technology underlying the networks’ interconnection” into 4901:1-7-12(A)(1)(a). This could again be interpreted as imposing IP interconnection obligations that the FCC has not determined exist. Verizon proposes revising the language to be added to 4901:1-7-12(A)(1)(a) to read as follows: “regardless of the network technology utilized by the telephone company to transport or terminate that traffic.” This revision tracks the language proposed in 4901:1-7-12(B)(2) and preserves the rule’s intent by recognizing that the FCC has adopted a prospective intercarrier compensation framework that brings VoIP-PSTN traffic within the section 251(b)(5) framework.<sup>5</sup>

A final concern regarding this section relates to its proposal to enforce the FCC’s new signaling rules without regard to the outcome of pending rehearing/reconsideration and waiver petitions relating to those rules. Proposed 4901:1-7-12(B)(2) would require all transit providers to comply with 47 C.F.R. 64.1601(a) as effective on November 30, 2012. As discussed above, requiring compliance with federal law as of a “frozen” date is a significant problem in and of itself. That concern is only magnified here given the number of pending rehearing/reconsideration and waiver petitions with respect to the *FCC Order*’s new signaling

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<sup>5</sup> See *FCC Order*, ¶ 943.

requirements.<sup>6</sup> Although 4901:1-7-12(B)(2) would apply only “where technically and economically feasible,” it is still problematic that the proposed rule would demand compliance with 47 C.F.R. 64.1601(a) as it stands on November 30, 2012, even though the FCC may subsequently revise that rule and/or grant certain carriers waivers from compliance with portions of it.

To address this issue, Verizon suggests that the Commission revise the first sentence of proposed 4901:1-7-12(B)(2) as follows: “... comply with the signaling information delivery requirements outlined in 47 C.F.R. 64.1601(a), as amended over time, and as limited by any waivers granted to specific carriers.”

**4901:1-7-14 Compensation for intrastate access reciprocal compensation traffic and carrier-to-carrier tariff**

As with 4901:1-7-12 above, the undefined term “access reciprocal compensation,” which appears throughout 4901:1-7-14, is confusing. The Commission should add a definition to 4901:1-7-01 that reads as follows:

4901:1-7-01(xx) “Access Reciprocal Compensation” has the meaning set forth in 47 C.F.R. § 51.903(h).

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Verizon appreciates the opportunity to comment on the proposed amendments to the Commission’s carrier-to-carrier rules, and respectfully urges the Commission to adopt Verizon’s suggested revisions thereto.

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<sup>6</sup> See, e.g., *Wireline Competition Bureau Seeks Comment on Alaska Rural Coalition And Fairpoint Communications, Inc. Petitions for Limited Waiver of Call Signaling Rules*, Public Notice, WC Docket No. 10-90, *et al.* (Apr. 4, 2012); *Wireline Competition Bureau Seeks Comment On General Communication, Inc.'s Petition For Limited Waiver*, Public Notice, WC Docket No. 10-90, *et al.* (Mar. 1, 2012); *Wireline Competition Bureau Seeks Comment on CenturyLink Petition for Limited Waiver of Call Signaling Rules*, Public Notice, 27 FCC Rcd 466 (2012); *Wireline Competition Bureau Seeks Comment on AT&T Petition for Limited Waiver of Call Signaling Rules*, Public Notice, 27 FCC Rcd 219 (2012).

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