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 Carrier-to-Carrier Rules.	))))	Case No. 12-0922-TP-ORD

<u>COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC</u>

I. INTRODUCTION

Pursuant to the Commission's March 21, 2012 Entry, Cincinnati Bell Telephone Company LLC ("CBT") offers its comments on the Commission Staff's proposed changes to the Local Exchange Carrier-to-Carrier Rules contained in Chapter 4901:1-7 of the Ohio Administrative Code ("OAC"). Attached to the Commission's March 21, 2012 Entry was a series of proposed amendments to the Commission's Local Exchange Carrier-to-Carrier Rules contained in Chapter 4901:1-7 of the OAC. CBT agrees with most of the proposed changes to the rules. However, CBT would respectfully suggest that the Commission reconsider several of the proposed changes, as discussed below.

II. COMMENTS ON PROPOSED RULE CHANGES

A. Rule 4901:1-7-03 -- Toll Presubscription.

The Commission Staff only proposes minor changes to Rule 4901:1-7-03, which addresses toll presubscription. CBT proposes an additional change. Currently, subpart (F) of the rule requires a LEC to read a random listing of all available toll service providers when a new customer is unable to make a selection of long distance carriers. The last sentence of the first paragraph of subpart (F) selectively exempts CLECs, AT&T and Frontier North from the requirement to read a random list of toll providers. While the rule does not explain why only those carriers are excused, CBT believes that this is based upon waivers of the comparable federal Equal Access Scripting requirement. It is now time to eliminate this requirement for all LECs.

The long distance market is radically different today than it was when this rule was created. Competition today comes from cable companies, VoIP and wireless providers, who offer "any distance" service at the same price. These companies do not rely upon the local exchange network for access. Standalone long distance service has become a fringe market, with most customers obtaining long distance service as part of a bundle. Currently, the United States Telecom Association and CBT both have Petitions for Waiver pending before the FCC on this issue.[1] More recently, the United States Telecom Association filed a Petition for Forbearance from a number of legacy FCC regulations, including the Equal Access Scripting Rule.[2] CBT suggests that the Commission eliminate the state requirement. In the event the Commission is not prepared to do so at this time, CBT would suggest that the rule at least be amended to state that any LEC that receives a federal waiver or forbearance from enforcement of Equal Access Scripting will also be exempt from the state requirement.[3]

B. Rule 4901:1-7-06(A)(1), (A)(2) -- "Regardless of the Network Technology"

The Commission Staff has proposed inserting the phrase "regardless of the network technology" or similar wording at several places in the rules. In Rule 4901:1-7-06(A)(1), the proposed language would expand the duty to interconnect to include a requirement that each telephone company interconnect directly or indirectly with any other telephone company

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[1] *Petition of the United States Telecom Association for Waiver from Application of the Equal Access Scripting Requirement*, WC Docket No. 08-225 (filed Nov. 10, 2008); *In the Matter of Petition of Cincinnati Bell Telephone Company LLC for Waiver From Application of the Equal Access Scripting Requirement*, WC Docket No. 09-206 (filed Sept. 11, 2009).

[2] Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations, WC Docket No. 12-61 (filed Feb. 16, 2012).

[3] This could be accomplished by adding the phrase "or any other LEC that is granted a waiver or forbearance from enforcement of the federal equal access scripting requirement" at the end of the first paragraph of subpart (F).

regardless of the network technology underlying the interconnection. Proposed Rule 4901:1-7-06(A)(2) would require interconnection with other telephone companies for the exchange of telecommunications traffic, regardless of the network technology underlying the interconnection. The Commission Staff has not provided any reason why it has proposed these changes. There is no indication that there have been problems with telephone companies reaching agreement on how to physically interconnect their networks.

The Commission should omit the phrase, "regardless of the network technology underlying the interconnection" in these parts of the rule, for both legal and practical reasons. First, the language expands the duty to interconnect beyond what is required by federal law. As the rule itself acknowledges, interconnection of telecommunications carriers' networks is governed by § 251(a) of the Telecommunications Act.[4] By statute in Ohio, the Commission is prohibited from establishing any requirements for network interconnection that exceed or are inconsistent with or prohibited by federal law, including federal regulations.[5] The proposed rules exceed the requirements of federal law, which does not include the concept of interconnection regardless of technology. The rule cannot create duties beyond what is already required by federal law.

Second, even if the Commission was empowered to expand upon federal interconnection requirements, from a practical standpoint the rule is vague and unworkable. The rule provides no detail specifying the respective responsibilities to provide the equipment necessary to interface between different technologies. On its face, the rule may require a telephone company to do whatever is necessary to interconnect directly with another requesting telecommunications carrier even if the other carrier employs an incompatible technology. Telephone companies

[4] 47 U.S.C. § 251(a).
[5] Revised Code § 4927.16(A).

should not be required to modify their own networks and incur costs to accommodate another carrier's choice of different technology. For example, today carriers that employ IP technology within their own networks and who wish to interconnect with the PSTN must convert their IP traffic to a TDM signal in order to exchange traffic. The Commission should not disturb that responsibility. The proposed rule is silent on who is responsible for providing the conversion interface and arguably could require existing telephone companies to adapt their network technologies to directly interface with any unique technology that may be employed by other carriers without provision for the recovery of the costs to do so.

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

In Rule 4901:1-7-12(A)(1)(a), the Commission Staff has proposed to expand this rule to include the requirement to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic pursuant to 47 U.S.C. 251(b)(5) "regardless of the network technology underlying the networks' interconnection." In Rule 12(B)(1), the Commission Staff has proposed eliminating the phrase "technically and economically feasible" with respect to the measurement of minutes-of-use for compensation purposes. The Commission should not adopt these changes for the same reasons discussed in Part B, *supra.* In addition, these changes ignore the requirement under federal law that an interconnection arrangement must be technically feasible to be required. Elimination of that qualifier is a substantial expansion of interconnection duties that is prohibited by both federal and state law.

Proposed Rule 12(C)(3) would also characterize traffic that is converted from IP format to TDM format as "telecommunications traffic." The FCC has long struggled with the issue of whether calls that originate or terminate in IP format at one end and TDM format at the other end are "telecommunications service" or "information service." The FCC has avoided a blanket classification of IP traffic as either "telecommunications" or "information" traffic. For example, in response to the Minnesota Public Utilities Commission's attempt to impose 911 requirements on Vonage's voice over Internet protocol ("VoIP") service, without determining whether VoIP was "telecommunications" or "information," the FCC declared that Vonage's service was jurisdictionally interstate and preempted state regulation.[6] Since then, from time to time the FCC has issued its own rules governing interconnected VoIP service. Most recently, in its comprehensive Intercarrier Compensation Reform Order,[7] the FCC issued comprehensive guidance on appropriate intercarrier compensation for various forms of traffic. The FCC specifically addressed VoIP traffic in detail and established intercarrier compensation rules for that traffic.[8] It is not necessary for this Commission to issue rules on the same subject. Nor should this Commission make any determination whether such traffic is "telecommunications."

D. Rule 4901:1-7-14 -- "Switched Access Reciprocal Compensation"

In Proposed Rule 4901:1-7-14, the Commission Staff has coined the term "intrastate switched access reciprocal compensation," which has generally been substituted for the term "intrastate switched access."[9] Apparently, this term is intended to complement the term "non-access reciprocal compensation" employed in Rule 4901:1-7-12 and to assist in distinguishing the two types of traffic. However, the term "switched access reciprocal compensation" is an oxymoron of sorts and should not be adopted.

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[6] *In re Vonage Holdings Corp.*, 19 FCC Rcd 22404 (2004). The FCC's preemption order was affirmed by the United States Court of Appeals for the Eighth Circuit. *Minnesota Pub. Util. Comm'n v. FCC*, 483 F.3d 570 (2007).

[7] *Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 10-90, FCC 11-161, (rel. Nov. 18, 2011).

[8] Intercarrier Compensation Reform Order, § XIV, ¶¶ 933-975.

[9] See Rules 4901:1-7-14(B), (C), (D), (E) and (F).

Switched access charges are paid by interexchange carriers to local exchange carriers for the use of their networks for the origination and termination of interexchange calls. These charges are governed by access tariffs and payments flow in one direction – from the interexchange carrier to the local exchange carrier. In accordance with the FCC's Intercarrier Compensation Reform Order, intrastate terminating switched access rates must be reduced to interstate rate levels by July 2013, then the rates charged for both forms of access will decline to bill and keep over a period of years.

By way of contrast, compensation for the exchange of non-access traffic between two local exchange carriers has been through mutual and reciprocal compensation where each originating carrier pays the terminating carrier – these payments actually are reciprocal, *i.e.*, they flow in both directions. While the FCC's Intercarrier Compensation Reform Order will also eventually require reciprocal compensation rate levels to decrease to bill and keep, compensation for non-access local exchange traffic will remain reciprocal until it is phased out.

While it is appropriate to distinguish between "non-switched access" traffic and "switched access traffic," the term "reciprocal compensation" is incompatible with and not appropriately applied to switched access traffic. The Commission should delete the words "reciprocal compensation" anywhere in the proposed rule changes where they appear together with "switched access."

E. Rule 4901: 1-7-27 -- Local Exchange Carrier Default

In proposed Rule 4901:1-7-27(A) (formerly Rule 4901:1-7-29), the Commission Staff has proposed to lengthen the requirement to notify the Commission prior to termination of another LEC's access to its network for nonpayment from fourteen to twenty-one calendar days. No reason has been provided for extending this notice period and CBT is unaware of any situation where the fourteen day period has been inadequate. There is no reason to change this rule.

III. CONCLUSION

For these reasons, CBT respectfully requests that the Commission modify the proposed rule changes as discussed above.

Respectfully submitted,

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