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. 12-922-TP-ORD |

---

INITIAL COMMENTS OF THE AT&T ENTITIES

---

**Introduction**

The AT&T Entities[1] ("AT&T"), by their attorneys and pursuant to the Entry adopted on March 21, 2012, submit these initial comments on the Staff's proposed changes to the carrier-to-carrier rules. For the most part, AT&T believes that the Staff's proposed changes are appropriate and should be adopted. In several cases, however, AT&T has concerns or questions about the proposed changes that merit further review prior to their adoption by the Commission.

An overarching concern is with the use of the phrase "regardless of the network technology underlying the interconnection" in several rules related to interconnection and intercarrier compensation. As explained in the Entry, the Staff's proposed changes to these rules are intended to be "consistent" with the FCC's recent orders involving intercarrier compensation. Entry, p. 2. However, in important respects, the addition of the "regardless" language might have unintended adverse consequences that are contrary to, and not consistent with, the FCC's orders. For these reasons, the phrase "regardless of the network technology underlying the interconnection" should be removed from rules 4901:1-7-06(A)(1) and (2).

---

[1] For purposes of this case, the AT&T Entities include The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, Inc., SBC Long Distance, LLC d/b/a AT&T Long Distance, and New Cingular Wireless PCS LLC.

In rule 4901:1-7-06(A)(3) the "regardless of the network technology underlying the interconnection" language can be retained (because this provision addresses only good faith negotiations) but this provision should be modified to limit it to "voice telecommunications traffic" by inserting the word "voice" before "telecommunications." This would make the rule consistent with the FCC's requirements.

In addition, in rule 4901:1-7-12(A)(1)(a), the phrase "regardless of the network technology underlying the interconnection" should be removed. Here again, the use of that qualifier improperly expands the FCC's directive and would create an inconsistent and arbitrary state requirement regarding traffic compensation.

These changes are necessary because all the FCC has mandated at this point is that it "expect[s] all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic." FCC 11-161, Paragraph 1011[2]. The majority of the discussion of this issue appears in the further notice of proposed rulemaking ("FNPRM") section of the document, paragraphs 1335-1398, where the FCC seeks comment on a number of issues including statutory authority, standards and enforcement mechanisms, applicability to other non-voice types of traffic, responsibility for the cost of IP-to-TDM conversions, and whether IP-to-IP interconnection should be left to unregulated commercial agreements. Thus, nothing in the FCC order requires the Ohio rules to be amended to include the "regardless"

[2] 1011. In particular, even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise. Moreover, we expect such good faith negotiations to result in interconnection arrangements between IP networks for the purpose of exchanging voice traffic. As we evaluate specific elements of the appropriate interconnection policy framework for voice IP-to-IP interconnection in our FNPRM, we will be monitoring marketplace developments, which will inform the Commission’s actions in response to the FNPRM (footnote omitted).

language the Staff proposes. The Commission should not amend its rules based on speculation grounded in an FCC further notice of proposed rulemaking. In fact, in its comments to the FCC in response to the FNPRM, AT&T has argued that "FCC regulation of IP-to-IP interconnection would be not only unwise as a policy matter, but also unlawful." Comments of AT&T, In the Matter of Connect America Fund, et al., WC Docket No. 10-90, et al., February 24, 2012, p. 4.[3] Unless and until the issues presented in the FNPRM are addressed and resolved by the FCC, the "regardless" language should not be grafted onto the Ohio rules specified above.

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

In division (C), the added language would be improved with an explicit recognition that some requirements mandated by statute may be waived by the very terms of the statute. As it stands, the proposed language suggests that a "statutory mandate" cannot be waived in any circumstance; this is not correct. AT&T suggests the following edit:

> 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 <u>for which no waiver is permitted</u>.

[3] AT&T commented as follows: FCC regulation of IP-to-IP interconnection would be not only unwise as a policy matter, but also unlawful. The Commission has no authority, under Title II or otherwise, to regulate interconnection between two providers of Title I information services, as IP services should generally be classified. In addition, the section 251(c) requirements specific to "ILECs" do not apply to an information services provider, even if affiliated with a legacy telco, that provides IP-based services by means of new packet-switched, fiber-based networks. That result makes abundant sense. In 1996, ILECs occupied nearly 100 percent of the relevant market ("local exchange" telephone services). As the industry completes its shift to IP technology, consumers will buy communications services not from "CLECs" or "ILECs," but from broadband ISPs. In that environment, wireline ISPs associated with legacy ILECs will hardly be "dominant" in any relevant market. Even today, and even if one excludes wireless providers from the market definition, non-cable wireline ISPs often lag behind their cable competitors in market share. It would be perverse to continue regulating those wireline ISPs as though they were monopolists in a product market where other providers are ascendant, particularly when some commentators have predicted that those other providers are likely to end up as broadband monopolists in their own right (footnote omitted).

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

In division (B) of this rule, Staff has proposed eliminating the "if technically and economically feasible" language that goes to the identification and measurement of certain traffic. AT&T recommends that this language not be eliminated. As noted above, the only clear IP-to-IP obligation contained in the FCC Order is the duty to negotiate in good faith. Modification of this rule at this time is premature in that there is no current duty to interconnect and inclusion of this language assumes that IP-to-IP interconnection will occur, will be subject to regulation, and will be subject to reciprocal compensation, all issues being reviewed as part of the FCC's FNPRM. Furthermore, the addition of this language adds little, since this traffic will either be subject to 47 U.S.C 251(b)(5) or it won't.

In divisions (D)(3) and (D)(4)(d) of this rule, the references to the FCC rule ("C.F.R. 51.713") are missing the Title 47 designation and should appear as "47 C.F.R. 51.713." However, in division (D)(3) the Commission should consider citing 47 C.F.R. 51.705(a), which is the substantive rule on this point, rather than 47 C.F.R. 51.713.

**4901:1-7-27 Local exchange carrier default**

In this rule, Staff has proposed increasing the advance notice to the Commission from 14 days to 21 days in situations where one LEC intends to terminate service to another LEC. It is unclear why this additional time is required by the Commission or its Staff to determine if "further investigation is warranted or that immediate termination may not be in the public interest . . . ." AT&T is unaware of any situations where termination of a non-paying

LEC's service has resulted in any complaints by end users or hardship for either the end users or unfair treatment of the non-paying LEC. Therefore, it is unclear why Staff proposed to extend the notice time period; no reason supporting this change has been given.

The Commission must consider the likely "unintended consequences" of such a change. First of all, to accommodate the proposed extended notification period, the billing party will either need to delay action against the non-paying party or provide notice to the Commission earlier in the collection process. Either action will result in increased costs and/or additional effort on the part of the billing parties and the Commission Staff. Allowing additional time prior to termination will result in slower payment and increased unpaid amounts. The non-paying party has, by this time, received ample notice of collection and opportunity to make payment or notify end users of pending disconnection. The billing parties should not be exposed to additional losses caused by more delay and will likely choose to provide notice to the Commission before the collection process has been fully completed. Earlier notice will mean that the Commission will receive notice for more non-paying parties, rather than for those actually scheduled for termination, resulting in additional follow-up by both the billing party and the Commission Staff when the termination is not likely. Consequently, both LECs will be forced to investigate the status of collection and provide information to the Commission when further action may not be necessary. In addition, the Commission Staff will be involved in additional information-gathering and contacts which can be avoided if the current 14-day notice period is retained.

In this regard, the Commission must also be careful to avoid any process that conflicts with, or hampers, the billing party's rights under the Commission-approved interconnection and resale agreements. In a typical interconnection agreement, the billing party may provide a written demand to the non-paying party if a bill is not paid by the due date. If the non-paying party does not satisfy the written demand in a timely manner, the billing party may, among other things, refuse to accept new orders and discontinue service. *See, e.g.*, Case No. 03-2126-TP-NAG, General Terms & Conditions, § 9.5.1 (SBC/Excel interconnection agreement). The Commission cannot extend the timeframes established in the interconnection and resale agreements by requiring its Staff to receive longer notice of the termination of service. The Commission retains the power, however, to stay a termination of service in appropriate circumstances (see Division B, unchanged from the current rule).

**Conclusion**

For all of the foregoing reasons, the Commission should amend the proposed rules in the manner suggested by AT&T.

Respectfully submitted,

The AT&T Entities

By: /s/ Jon F. Kelly

Jon F. Kelly (Counsel of Record)
Mary Ryan Fenlon
AT&T Services, Inc.
150 E. Gay St., Room 4-A
Columbus, Ohio 43215

(614) 223-7928

Their Attorneys

12-922.comments.AT&T Entities.4-13-12.docx