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

COMMENTS
OF
HYPERCUBE TELECOM, LLC

INTRODUCTION

By its Entry dated March 21, 2012, The Public Utilities Commission of Ohio ("Commission") requested comment from interested persons to assist in its review of Staff's proposed changes to the Commission's carrier-to-carrier rules, Ohio Administrative Code ("O.A.C.") Chapter 4901:1-7. HyperCube Telecom, LLC ("HyperCube") submits its comments on the Staff's proposed changes. HyperCube appreciates the opportunity to express its views with respect to the Staff proposals.

ABOUT HYPERCUBE

HyperCube provides competitive transport of switched access traffic, as well as local traffic, from networks of a growing range of customers, including interexchange carriers, cable companies, Voice-over-Internet Protocol-based ("VoIP") providers and LECs. Additionally, HyperCube performs switching, transport and database queries, among other services. HyperCube competes directly with traditional networks for this traffic in the highly competitive tandem switching marketplace. HyperCube's tandem network fulfils a critical need in today's telephony environment by bridging the gaps between the various networks and network

technologies. HyperCube's nationwide and geographically diverse tandem network includes 18 switches, one of which is located in the Cleveland, Ohio metropolitan area.

COMMENTS

General

As an initial and general observation, good-faith negotiations of commercial agreements should be encouraged. The proposal seems devoid of this important goal of both federal law and the rules of the FCC which HyperCube supports. So long as it is not done anti-competitively, parties should be allowed to negotiate rates other than zero, or rates of zero, or whatever they wish that the other party can accept. The market should be allowed to work wherever possible, with the PUCO standing by empowered to intervene when market power is imbalanced or when there are disputes that the parties cannot overcome.

Rule 4901:1-7-28 ("Rule 28")

The removal of the expedited carrier-to-carrier dispute resolution provision is counter-productive in multiple ways. HyperCube opposes its deletion. State commissions have an important role in the carrier-to-carrier dispute-resolution process. More importantly, it is often the case that a complaint is filed in response to a competitively-sensitive and unilateral action on the part of a dominant carrier involved in the particular dispute. In such instances, time is of the essence for a resolution. This was the original purpose behind the creation of this rule and the need for rapid resolution of disputes that impact the ability of the complainant to "provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element under an interconnection agreement" remains as relevant today as it did when the rule was first introduced.

Although the Commission's Entry explains Staff's motivation for the rule's elimination as being "problematic due to the difficulty of engaging in discovery and preparing testimony within the compressed hearing time frames," these problems pale in comparison to the situation that a competitive carrier can find itself when it has been unilaterally, and without justification, suspended from a wholesale ordering system that is necessary to order the wholesale services that it requires to serve a retail customer. In such situations, the time periods set forth under the Commission's regular complaint rules are simply too long to provide meaningful relief to an aggrieved party. In any event, elimination of this rule and ignoring the situation that this rule was intended to address is an unreasonable response to the perception that the timelines are "problematic."

Furthermore, the elimination of expedited dispute resolution in Ohio would undermine the ability of Commission to retain the authority it currently retains under federal law by eliminating the Commission as a viable venue for critical carrier-to-carrier disputes. Carriers will have no alternative but to seek emergency relief from the FCC, hardly a satisfactory alternative, but perhaps superior to the Commission's regular complaint process. This would harm competitors that lack market power as they attempt to achieve reasonable interconnection and would delay, or even prevent, competitive benefits from flowing through to Ohio consumers.

HyperCube urges the Commission to retain Rule 28 as currently structured.

Rule 12(B)(2)

On page 24, HyperCube is supportive of mandatory compliance with call signaling information delivery requirements, because, for example, such compliance is critical to the elimination of phantom traffic and important to ensuring proper traffic rating.

Rule 12 (and Rule 14) Generally

A term used by the Staff appearing in a number of places throughout Staff's proposed revisions, but particularly Rules 12 and 14, is "switched access reciprocal compensation." The notion behind this term is fundamentally flawed. Compensation is either switched access (for non-local) or reciprocal compensation (for local). The term "switched access reciprocal compensation" presents needless potential for confusion. Certain telecommunications traffic fits within the definition of "switched access," and certain telecommunications traffic is subject to a "reciprocal compensation" billing arrangement. Under the FCC's Intercarrier compensation reform order, in certain instances some non-local traffic that is switched will now be treated the same as some local traffic now subject to reciprocal compensation. So the impetus to coin the term "switched access reciprocal compensation" is understandable. But not all switched access traffic has been addressed by the FCC. Originating switched access traffic has yet to be fully addressed, and it is not yet clear whether all elements of terminating switched access will default to rates of zero, to a bill and keep ("B&K") regime with rates other than zero, or to some other alternative.

In order to remedy this unnecessary potential for confusion, HyperCube recommends that where the term "switched access reciprocal compensation" now appears in the Staff's proposed revisions, the phrase "reciprocal compensation" be deleted. This essentially keeps the current wording of the rule in place, as it applies to switched access traffic. The reasoning behind this recommendation is that the compensation regime for switched access traffic is still currently in flux. The FCC's determination that certain switched access traffic is subject to reciprocal compensation arrangements will govern the treatment of that traffic, irrespective of the phrasing

of this Commission's rule. The designation of "switched access reciprocal compensation" traffic in the Commission's rules is simply not needed at this time.

In addition, as alluded to above, that a B&K arrangement has to be zero-rated is flawed. Even though there may be a B&K regime, that doesn't mean that carriers/providers don't compensate other carriers/providers when traffic volumes are out-of-balance or when value-added services are provided. Furthermore, the better term to use in the context of this rule is "providers", rather than "carriers." The obligation to exchange traffic extends beyond the technical definition of "carriers", an example being VoIP providers, for instance.

Rule 12(C)(3)

As currently worded, this new provision is unclear for an additional reason beyond those discussed above. It appears that Staff may mean to include "shall be subject to non-access reciprocal compensation" to the end of the first sentence. In addition, HyperCube recommends the addition of language to this Subsection (C) that reiterates the point that this rule establishes the default arrangement and that carriers may negotiate alternative arrangements, similar to the provision found in Rule 13(E).

Rule 13(D)

From its inception, this rule has applied a TELRIC-based compensation obligation on non-ILEC carriers. However, it does not appear any non-ILEC carrier has ever been subjected to a proceeding to determine its actual TELRIC rate. But far more to the point, the application of TELRIC pricing outside the context of Section 251 of the Telecommunications Act ("the Act") simply has no basis in reason. Non-ILEC facilities are simply not subject to the anticompetitive pricing risks that attend the situation where one carrier is dominant, both in terms of scope and scale of network deployment, due to its monopoly legacy. The notion of TELRIC pricing being

applied to non-ILEC intermediate providers has no foundation in either policy or the law. The services provided by non-dominant carriers are, by definition, competitive, and the Commission should not be in the position of dictating a particular pricing outcome.

HyperCube recommends that the phase "where the intermediate telephone company is an ILEC," be added to the beginning of subparagraph (D).

CONCLUSION

Again, HyperCube appreciates the opportunity to express its views with respect to the Staff proposals. HyperCube requests that the Commission adopt the changes to the Staff's recommendations to Chapter 4901:1-7 as set forth above.

Respectfully submitted on behalf of,
HYPERCUBE TELECOM, LLC.

Thomas J. O'Brien
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
Telephone: (614) 227-2335
Facsimile: (614) 227-2390
tobrien@bricker.com

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Summary: Comments electronically filed by Teresa Orahood on behalf of Hypercube Telecom, LLC