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

REPLY 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 reply comments. Initial comments were filed by the AT&T, Cincinnati Bell Telephone Company LLC ("CBT"), the Ohio Cable Telecommunications Association ("OCTA"). the Ohio Telecom Association ("OTA"), Hypercube Telecom, LLC ("Hypercube"), and Verizon.

Several of the commenting parties make appropriate recommendations about the Staff's proposed changes to the carrier-to-carrier rules. Many other recommendations, however, should not be adopted. Included among these are several changes to provisions for which the Staff proposed no changes. AT&T recommends that the Commission adopt final rules that reflect AT&T's initial and reply comments.

Several parties agree with AT&T's concern, expressed in its initial comments, with the use of the phrase "regardless of the network technology underlying the interconnection"

[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 several rules related to interconnection and intercarrier compensation. CBT, OTA, and Verizon generally echo AT&T's concerns in this regard. CBT, pp. 2-4; OTA, pp. 2-4; Verizon, pp. 4-5. Conversely, OCTA proposes to modify this phrase to "regardless of the network technology used to serve the Customer or end user." OCTA, p. 3, 5. OCTA argues that this would be "consistent with the current status of jurisdiction" granted by the Federal Communications Commission ("FCC") to the state commissions. OCTA, p. 3. Verizon responds to this claim succinctly: the Commission should not implement rules that could be read to impose requirements in the IP interconnection realm before the FCC addresses the issue. Verizon, p. 5.

4901:1-7-01 Definitions

OCTA's proposed revisions to the definition of "Local exchange carrier" are appropriate and would make the terminology consistent with the definition of "Facilities-based CLEC." OCTA, p. 2. AT&T would propose a further edit: removing the phrase "on a common carrier basis" from this definition. This is because the phrase "and as such is a common carrier" was removed from the underlying statutory definition of "telephone company" in R. C. § 4905.03(A)(1), effective September 13, 2010. This further edit would make the rule consistent with the 2010 statutory change. In addition, the change proposed by OCTA should be carried over into the definition of "Incumbent local exchange carrier" by changing the phrase "basic local exchange service" to "telephone exchange service or exchange access services."

4901:1-7-02 General Applicability

Verizon makes an excellent point in its analysis of division (A) of this rule. Verizon, pp. 1-4. Verizon is correct that, where the Commission is not incorporating the text of a federal law or rule into its rules, it need not follow R. C. § 121.75. Verizon, p. 2, fn. 2. R. C. § 121.72 provides in part that "[a]n agency incorporates a text or other material into a rule by reference when it states in the rule that a text or other material not contained in the rule is to be treated as if it were contained in the rule." Here, the Commission is simply referencing federal laws and rules in appropriate places, and is not incorporating them into its rules such that compliance with R. C. § 121.75 would be necessary. Thus, the Commission need not specify the date of a specific reference to the Code of Federal Regulations in its rules. This will avoid the issues that Verizon appropriately recognizes.

OTA echoes AT&T's proposed change to division (C) of this rule; that change should be adopted. OTA, p. 2.

4901:1-7-03 Toll presubscription

AT&T has no objection to CBT's suggested changes to this rule. CBT, pp. 2-3.

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

AT&T has no objection to OCTA's proposed changes to this rule. OCTA, p. 2.

4901:1-7-06 Interconnection

Apart from the issue of the use of the phrase "regardless of the network technology used," which is discussed in the introduction of both AT&T's initial and these reply comments, AT&T Ohio does not object to the other edits to this rule proposed by OCTA in divisions (A)(4) and (B). OCTA, p. 3.

4901:1-7-07 Establishment of interconnection agreements

OCTA proposes adding a requirement to division (A)(1) of this rule that the telephone company receiving a request to negotiate shall acknowledge the receipt of that request and commence negotiations within two weeks. OCTA, p. 4. AT&T opposes this recommendation because the requirement has not been shown to be necessary and may not be appropriate in some circumstances. Federal law controls this process and imposes no such time limits; it must be questioned why a state should impose an arbitrary time limit like that proposed by OCTA. In the 2006 iteration of this rule review, AT&T noted, "The schedules proposed for responses as well are unnecessary and may hinder good faith negotiation." Initial Comments of AT&T, Case No. 06-1344-TP-ORD, January 5, 2007, p. 5. Here, too, OCTA's suggestion could have unintended adverse consequences.

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

AT&T supports the minor edit proposed by OCTA to this rule. OCTA, p. 4.

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

Apart from the issue of the use of the phrase "regardless of the network technology used," which is discussed in the introduction of both AT&T's initial and these reply comments, AT&T Ohio provides the following in response to other parties' comments.

OCTA proposes an explicit exception to be added in division (A)(2) of this rule. OCTA, pp. 5-6. The rule in question was designed to keep resale LECs from receiving compensation when they don't deliver any traffic. The proposed language addresses the situation where a resale LEC would hire and pay another entity to do the physical delivery of traffic, instead of relying on the underlying ILEC. The approach suggested, though, is problematic because this exception applies to ***nonfacilities-based*** LECs and OCTA's proposed language speaks, in part, to the circumstance where "the local exchange carrier assessing the applicable charges itself delivers such traffic to the called party's premises." OCTA, p. 6. As to such LECs, if they do not control facilities, it is unclear how they can terminate traffic themselves.

Verizon's proposed language "regardless of the network technology utilized by the telephone company to transport or terminate that traffic" is problematic. Verizon, p. 6. This is because CMRS is a technology that would be covered by that language, yet the FCC has ordered CMRS traffic to go to a Bill & Keep regime.

4901:1-7-13 Transit traffic compensation

Hypercube opposes the application of TELRIC pricing to CLECs in connection with division (D) of this rule. Hypercube, pp. 5-6. It proposes limiting this to the situation where the intermediate carrier is an ILEC. Id., p. 6. AT&T opposes this suggestion, which is a solution in search of a problem. If non-ILECs don't have TELRIC rates, access rates become the default. HyperCube seems to want no rules imposing any rate limits on non-ILECs. This approach could prove problematic and lead to unintended consequences.

4901:1-7-22 Customer migration

OCTA suggests replacing division (D) of this rule with a provision that it says is consistent with "Best Practice #70" of the North American Numbering Council ("NANC"). OCTA, pp. 6-7. AT&T believes this suggestion is premature because this NANC recommendation is still awaiting FCC approval. Until approved, it could change and it would be unwise for the PUCO to adopt the recommendation before the FCC has done so.

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

OCTA proposes to retain the reference to the federal rule that contains the definitions used in the other rule that is referenced. OCTA, p. 7. AT&T does not object to this suggestion.

Current 4901:1-7-27 Reporting requirements

OCTA wants to retain and revise current Rule 27. OCTA, pp. 7-8. This is unwise and unnecessary because a similar reporting requirement was adopted in the revised Retail Telecommunication Services rules in Case No. 10-1010-TP-ORD, effective January 20, 2011. *See*, O.A.C. § 4901:1-6-37(B). That rule properly implemented the statutory change that took effect September 13, 2010 and the rule need not be further amended in the manner suggested by OCTA.

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

Several parties echo AT&T's concern about extending the timeframe for advance notice to the Commission Staff. CBT, p. 6; OTA, p. 6.

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

OCTA proposes to retain this rule, despite the Staff's well-reasoned proposal to rescind it. OCTA would expand the timeframes and, in its view, make the rule "workable." OCTA, p. 8. Hypercube also proposes to retain this rule. Hypercube, pp. 2-3. Neither commenting party offers justification enough to retain this rule. The Staff was correct to recommend its elimination. The elimination of this rule does not affect the ordinary complaint process under R. C. § 4927.21 at all. And nothing prohibits a party to a complaint from requesting (pursuant to a motion filed under O.A.C. § 4901-1-12) from asking for expedited treatment or an expedited ruling on any matter. As the Staff's recommendation to rescind the rule suggests, it really adds nothing but uncertainty to the Commission's processes. On occasion,

it has been invoked in a manner that conflicts with dispute resolution provisions of the parties' interconnection agreements. The rule should be rescinded.

Conclusion

For all of the foregoing reasons, the Commission should amend the proposed rules in the manner suggested by AT&T in its initial and in these reply comments.

Respectfully submitted,

The AT&T Entities

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 27th day of April, 2012 by e-mail, as indicated, on the parties shown below.

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Summary: Reply comments electronically filed by Jon F Kelly on behalf of The AT&T Entities