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Via Overnight Delivery & Electronic Mail

Ms. Renee Jenkins
Public Utilities Commission of Ohio
Docketing Division
180 East Broad Street
Columbus, Ohio 43215

RE: In the Matter of the Establishment of Carrier-to-Carrier Rules, Case No. 06-1344-TP-ORD

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of the Reply Comments of One Communications to be filed in connection with the above referenced proceeding.

If you have any questions concerning this matter, please do not hesitate to contact me.

Very truly yours,

R. Edward Price

R. Edward Price

TP/nj

cc: Service list

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of Carrier-to-Carrier Rules.	))	Case No. 06-1344-TP-ORD
In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines.	)))	Case No. 99-998-TP-COI
In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code.	))))	Case No. 99-563-TP-COI

REPLY COMMENTS OF ONE COMMUNICATIONS

In its first round of comments, One Communications pointed out several problems with the interconnection and competition safeguard provisions in the Commission's proposed wholesale rules. There is a broad consensus among the commenting parties, including both CLECs and ILECs, that much of the proposed rules establishing detailed information requirements, cost-sharing, and timetables for interconnection requests in Sections 4901:1-7-06 and -07 would be inconsistent with federal law and with industry practices that have existed for over ten years.[1] Many commenters were also critical of the proposed rules in Section 4901:1-7-26 on competition safeguards, because they would be inconsistent with the existing federal rules on CPNI, as well as overbroad and too difficult for carriers to administer.[2]

1 *See* Initial Comments of AT&T at 7-9; Initial Comments of Cincinnati Bell at 3-4; Initial Comments of the Ohio Telecom Ass'n at 4-5; Initial Comments of One Communications at 2-5; Comments of Pac-West at 1-3, 8-10; Comments of Time Warner Telecom at 2-3; Comments of Verizon at 1-3; Initial Comments of XO at 2-8.

2 *See* Initial Comments of AT&T at 20-22; Initial Comments of Cincinnati Bell at 7-10; Initial Comments of the Ohio Telecom Ass'n at 11-12; Initial Comments of One Communications at 9-11; Comments of Verizon at 13-18.

In these reply comments, One Communications addresses some additional remarks made by parties concerning (1) intercarrier compensation arrangements for transit traffic and (2) termination of wholesale services provided by one LEC to another. Consistent with federal law, the Commission's rules should require TELRIC pricing for ILEC transit services and not require that CLECs exchanging traffic via an ILEC tandem have an arrangement in place among themselves. Additionally, the Commission should change its proposed rules so that carriers providing wholesale services to defaulting LECs not be required to wait indefinitely to terminate those services.

Discussion

I. Intercarrier Compensation

In its initial comments, One Communications pointed out that Section 4901:1-7-14(C) of the proposed rules, requiring that CLECs match ILEC intrastate access rates, would be ill-advised and anticompetitive because it does not account for variations in network costs among ILECs and CLECs. One Communications therefore requested that this rule be stricken or, alternatively, modified to allow CLECs to (1) charge above-ILEC access rates if those rates are cost-justified or (2) lower their rates in stages. Other carriers have commented on additional intercarrier compensation issues, including provisions in the proposed rules concerning the rates and types of arrangements that must be in place for transit services. One Communications addresses these issues below.

A. Transit Traffic Compensation

Section 4901:1-7-13(C) of the proposed rules would require LECs to carry transit traffic (as an intermediate carrier for an originating and terminating carrier) if it is "appropriately compensated for the use of its network facilities necessary to carry the transit traffic" and if the "originating and terminating telephone companies have a compensation agreement in place that sets the rates, terms and conditions for the compensation of such transit traffic." Section 4901:1-7-13(D) goes on to say that the intermediate LEC must be compensated at its tariffed switched access rates until the Commission establishes TELRIC-based rates.

AT&T criticizes this rule because, in its view, federal law does not require LECs to provide transit service; and as a consequence any such service, if provided at all, should be at rates negotiated by the carriers involved pursuant to commercial agreements.[3] The Ohio Telecom Association ("OTA") echoes this criticism by saying that transit should be provided at either negotiated rates or access rates, not at TELRIC rates.[4] AT&T's and OTA's criticisms are wrong and reflect an erroneous view of federal law. Under Section 251(c)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, ILECs are required to interconnect directly with any requesting carrier for the routing and transmission of telephone exchange service. This requirement is broad and does not mandate that traffic exchanged through a Section 251(c)(2) arrangement be originated or terminated on the ILEC's network. Accordingly, interconnection for purposes of carrying transit traffic between two CLECs that are each directly interconnected with a particular ILEC falls within the scope of that ILEC's Section 251(c)(2) interconnection requirement.

This principle is well-settled in Ohio. The Commission, as recently as last year, agreed that federal law requires ILECs to provide transit as part of their interconnection obligation under Section 251(c)(2). In ruling that transit should be included in the interconnection agreement between SBC and TelCove, the Commission said the following:

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3 *See* Initial Comments of AT&T at 12-13.

4 *See* Initial Comments of OTA at 7.

> We find that Section 251(c)(2)(A) of the 1996 Act obligates SBC to provide, for the facilities and equipment of TelCove, interconnection with SBC's network for the transmission and routing of telephone exchange service and exchange access. Section 251(c)(2)(A) does not state transmission and termination of telephone exchange service and exchange access, which means it does not limit the interconnection under Section 251(c)(2)(A) to the mutual exchange of traffic originated and terminated between the two carriers. Under Section 251(c)(2)(A), SBC is required to interconnect with TelCove for transmission and routing of telephone exchange service and exchange access destined to TelCove's end-users as well as to a third party. Accordingly, we find that under Section 251/252 of the 1996 Act the terms and provisions governing transit service should be included in the parties' final ICA.[5]

As such, the Commission's proposed rule in Section 4901:1-7-13(D) requiring compensation for ILEC transit services at TELRIC rates is consistent with both federal law and Commission precedent.

Other state commissions have come to the same conclusion as the PUCO. The Missouri Public Service Commission, for example, said the following concerning transit:

> Th[e] intermediary carrier, for the purposes of the present discussion, is a dominant ILEC like SBC. SBC is not indirectly interconnected to the two carriers in question, it is directly interconnected. Its duties are set out in § 251(c)(2). That section requires SBC to interconnect with any requesting carrier for the purpose of exchanging traffic. The statute does not specify that the traffic must be intended for termination, or that it must have originated, on the two [directly] interconnected networks.[6]

Recognizing the compelling need, from a policy perspective, for ILECs to be required to provide cost-based transit, the Texas Public Utilities Commission, in February 2006, ruled that

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5 *In the Matter of TelCove Operations, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Ohio Bell Telephone Company d/b/a SBC Ohio*, 04-1822-TP-ARB, Arbitration Award (Jan. 25, 2006) at 29.

6 *Southwestern Bell Telephone Petition for Compulsory Arbitration of Unresolved Issues for a Successor Interconnection Agreement to the Missouri 271 Agreement*, Final Arbitrator's Report, case No. TO-2005-0336, Section 1(C) (June 21, 2005). *See also, e.g., In the Matter of Joint Petition of NewSouth Communications Corp. et al. for Arbitration with BellSouth Telecommunications, Inc.*, Docket No. P-772, Sub 8, Docket No. P-913, Sub 5; Docket No. P-989, Sub 3; Docket No. P-824, Sub 6; Docket No. P-1202, Sub 4, North Carolina Util. Comm'n, July 26, 2005 ("[t]he tandem transit function is a § 251 obligation and BellSouth must charge TELRIC rates for it").

> requiring SBC Texas to provide transit services at cost-based rates will promote interconnection of all telecommunications networks. In the absence of alternative transit providers in Texas, the Commission finds that SBC Texas's proposal to negotiate transit services separately outside the scope of an FTA § 251/252 negotiation may result in cost-prohibitive rates for transit service.[7]

In other words, apart from the statutory obligation in Section 251, given the general lack of alternative tandem transit service providers and the need for indirect interconnection, requiring ILECs to provide tandem transit service has been, and remains, sound public policy.[8] From both a legal and policy perspective, therefore, the rules should include a requirement that ILECs provide transit service at cost-based rates.

If the Commission adopts the proposal to require special access rates on an interim basis until it can establish TELRIC-based rates, it should impose two further requirements. First, the rules should make clear that ILECs shall continue to provide transit services to a CLEC at rates contained in that CLEC's interconnection agreement. If there are no such rates for a particular CLEC, only then should an ILEC be permitted to charge tariffed access rates on an interim basis while the Commission holds a proceeding to set TELRIC rates. Second, the Commission should move expeditiously to establish TELRIC-based rates for tandem transit services. It would defeat the purpose of the Commission's regulation if ILECs could charge special access rates indefinitely pending a lengthy TELRIC proceeding. Indeed, it likely is possible to build upon existing TELRIC rates by using as a foundation existing rates for components of the service such as tandem switching, transport mileage, etc.

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7 *Arbitration of Non-Costing Issues For Successor Interconnection Agreements to the Texas 271 Agreement, Arbitration Award*, Docket No. 28821, at 23 (Feb. 22, 2006).

8 *See Petition of Neutral Tandem, Inc. for Interconnection with Verizon Wireless, Inc. Pursuant to Sections 201(a) and 332(c)(1)(B) of the Communications Act of 1934, as amended*, WC Docket No. 06-159, filed Aug. 2, 2006.

B. Transit Traffic Arrangements

Consistent with Pac-West's comments, Section 4901:1-7-13(C)(2) of the proposed rules should not require two CLECs to have a compensation arrangement in place with each other before an ILEC is obligated to provide them with transit services for the traffic they exchange.[9] CLECs are not subject, under federal law, to the same detailed requirements as ILECs for establishing interconnection agreements.[10] Rather, CLECs may interconnect with each other indirectly, most typically through an ILEC tandem. Thus, allowing ILECs block transit traffic from CLECs, unless the CLECs have interconnection agreements among themselves, is contrary to federal law. Moreover, such a requirement would be bad policy because it would impose unwarranted transaction costs on CLECs (by requiring interconnection arrangements among CLECs) and aid ILECs in blocking an essential means for CLECs to exchange traffic.

II. Termination of Wholesale Services Provided to Another LEC

One Communications agrees with the criticisms of AT&T, OTA, and Verizon concerning Section 4901:1-7-29 of the proposed rules, which would govern the termination of wholesale services by one LEC to another LEC for non-payment or other material default.[11] As currently written, this rule would provide for a potentially unlimited period of time during which a LEC would have to continue providing wholesale services, incurring their costs with little prospect of being compensated.[12] This is unfair, anticompetitive, and would restrict the availability of wholesale services to competitive carriers, particularly CLEC-to-CLEC services.

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9 Comments of Pac-West Telecomm at 4.

10 *See* 47 U.S.C. § 252(a).

11 *See* Initial Comments of AT&T at 23-24; Initial Comments of OTA at 12-13; Comments of Verizon at 19.

12 The Ohio Consumers' Counsel ("OCC") asked that it, in addition to the Commission, be notified where residential customers are involved. *See* Comments of OCC at 10. It also asked that, in the event the Commission or an attorney examiner directs an aggrieved LEC to suspend termination, the defaulting LEC's customers be given 60 days notice prior to termination. *See id.* One Communications opposes this

AT&T and OTA suggested that the rule be stricken entirely. Verizon requested that it be changed to allow for a stay of the termination of service for a maximum of 15 days. One Communications agrees that the Commission should not adopt the rule. Failing that, the Commission should change the rule to clarify the circumstances under which an investigation may be conducted and limit the time that the aggrieved LEC must continue providing services to the defaulting LEC. One Communications suggests that the Commission modify Section 4901:1-7-29(B) of its proposed rule as follows:

4901:1-7-29 Local exchange carrier default

. . . .

(B) If **the commission determines** ~~it is determined~~ that **a significant segment of the public will be harmed by an immediate termination of service by the aggrieved LEC (due, for example, to a lack of competitive alternatives)** ~~further investigation is warranted or that immediate termination may not be in the public interest~~, the commission ~~or an attorney examiner~~ may**, by order,** direct the company to suspend the termination **for no more than fifteen days** until further investigation or until the defaulting LEC's customer can be ~~properly noticed~~ **notified by the defaulting LEC, whichever is sooner.** This section is not intended to replace any default or dispute resolution provisions contained in an agreement between the LECs. Rather, it is an additional requirement should a default trigger the potential for termination of access from the aggrieved LEC's network.

Without this change, carriers providing wholesale services to LECs will be subject to a potentially indefinite waiting period before they are allowed to terminate services. During this waiting period, LECs that provide wholesale services could incur many thousands of dollars in uncollectible expenses. Needless to say, large increases in uncollectible expenses weakens the financial position of wholesale LECs and undermines their ability to provide competitive wholesale services. Particularly in the CLEC-to-CLEC wholesale context, such a requirement

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proposal because it would further extend the period during which wholesale carriers would be required to continue serving a defaulting LEC without compensation.

could have a chilling effect on the availability of wholesale services to CLECs and, hence, on the availability of competitive services to consumers in Ohio. The result would harm, rather than benefit, consumers. Surely all concerned parties would want to avoid such an unintended consequence from a rule that is ostensibly designed to ensure that end-user customers continue to have telecommunications services available to them.

Conclusion

One Communications respectfully suggests that certain of the Commission's proposed rules be either revised or eliminated, consistent with the discussion above and in One Communications' initial comments, so that they will be more effective in achieving their purpose of ensuring a competitive and vibrant telecommunications marketplace in Ohio.

Respectfully submitted,

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February 23, 2007

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Establishment of Carrier-to-Carrier Rules	)))	Docket No. 06-1344-TP-ORD

CERTIFICATE OF SERVICE

I herby certify that this 23rd day of February 2007, One Communications Corp today sent the Reply Comments, which were filed on February 23, 2007 by first class United States Mail to the parties below.

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