BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission finds:

I. BACKGROUND

On February 13, 2003, the Commission issued an opinion and order in Case Nos. 99-998-TP-COI, *In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines*, and 99-563-TP-COI, *In the Matter of the Commission Review of the Regulatory Framework for Competitive Telecommunications Services Under Chapter 4927, Revised Code*, adopting rules governing carrier-to-carrier relations in Ohio.

Applications for rehearing of the February 13, 2003, Opinion and Order were filed by Verizon North Inc. and Verizon Select Services Inc.; United Telephone Company of Ohio (now known as Embarq) and Sprint Communications Company L.P.; SBC Ohio (now known as AT&T Ohio); The Ohio Telecom Association; Cincinnati Bell Telephone Company; and AT&T Communications of Ohio Inc., TCG Ohio, CoreComm Newco, Inc., Time Warner Telecom of Ohio, LP, and WorldCom Inc. Pursuant to our Entry of April 3, 2003, the submitted applications for rehearing were granted for the limited purpose of allowing the Commission additional time in which to consider the issues raised on rehearing.

In light of the fact that over three and one-half years had passed since the adoption of the carrier-to-carrier rules and the pendency of the applications for rehearing, the Commission, in its Entry of November 21, 2006, determined it to be more prudent to open a new docket (Case No. 06-1344-TP-ORD) for the substantive consideration of new carrier-to-carrier rules in Ohio, rather than proceeding under the outdated record and the carrier-to-carrier rules approved in the prior dockets (Case Nos. 99-998-TP-COI and 99-563-TP-COI). In reaching this decision, the Commission noted that there have been significant regulatory changes on the federal level in the telecommunications industry over the past few years which have had a direct impact on the carrier-to-carrier obligations.[1]

The Commission staff's (staff) new proposed carrier-to-carrier rules were attached as an appendix to the Commission's Entry of November 21, 2006, in this proceeding. The Commission sought comments from interested persons regarding the revised proposed carrier-to-carrier rules. A conference was held on November 30, 2006, in order to allow

---

1 See *In the Matter of Unbundled Access to Network Elements*, WC Docket No. 04-313, *and Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket 01-338, rel. February 4, 2005 (Triennial Review Remand Order).

interested persons to ask questions in order to gain a better understanding of the staff's proposal and rationale.

The record reflects that the following entities have filed either initial comments, reply comments, or both:

> AT&T Ohio; Cincinnati Bell Telephone Company (Cincinnati Bell); the Ohio Cable Telecommunications Association (Ohio Cable Association); the Office of the Ohio Consumers' Counsel (OCC); the Ohio Telecom Association; One Communications Corp. (One Communications); Pac-West Telecom Inc. (Pac-West); Qwest Communications Corporation; Time Warner Telecom of Ohio LLC (Time Warner); United Telephone Company of Ohio dba Embarq and Embarq Communications, Inc. (collectively, Embarq); Verizon North Inc., MCImetro Access Transmission Services LLC dba Verizon Access Transmission Services, MCI Communications Services Inc. dba Verizon Business Services, Bell Atlantic Communications Inc. dba Verizon Long Distance, and NYNEX Long Distance Company dba Verizon Enterprise Solutions (collectively, Verizon); XO Communications Services Inc. (XO); CenturyTel of Ohio, Inc.; Windstream Ohio Inc. and Windstream Western Reserve Inc.; Arcadia Telephone Company, The Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone, The Benton Ridge Telephone, Buckland Telephone Company, The Champaign Telephone Company, Columbus Grove Telephone Company, The Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Frontier Communications of Michigan, The Germantown Independent Telephone Company, The Glandorf Telephone Company Inc., Kalida Telephone Company Inc., Little Miami Telephone Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, The New Knoxville Telephone Company, The Nova Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, The Ottoville Mutual Telephone Company, Pattersonville Telephone Company, The Ridgeville Telephone Company, Sherwood Mutual Telephone Association Inc., The Sycamore Telephone Company, Vanlue Telephone Company, Vaughnsville Telephone Company, and Wabash Mutual Telephone Company (collectively, "Small ILECs").

II. DISCUSSION OF INITIAL COMMENTS OR REPLY COMMENTS COVERING GENERAL TOPICS NOT SPECIFICALLY ADDRESSED IN THE LANGUAGE OF THE PROPOSED RULES

A. Referencing of Federal Law as of a Specific Effective Date

1. Comments

Cincinnati Bell asserts that there is no need to reference federal statutes inasmuch as the federal statute is applicable on its own force. AT&T Ohio questions whether a rule is appropriate if it simply repeats the language of a similar federal rule (AT&T Ohio Initial Comments at 3). AT&T Ohio notes that, throughout its proposed rules, the staff references federal rules and regulations in effect "as of November 1, 2006." The company submits that the Commission's actions are problematic inasmuch as there will always be a need to modify rules over time as the Federal Communications Commission (FCC) rules change or court decisions alter the obligations of carriers. Therefore, to the extent that references to the federal rules are retained, AT&T Ohio recommends that they should not be tied to federal law or rules in effect on a specific date but, instead, should be flexible enough to incorporate or reference federal law or rules as they may be amended in the future. AT&T Ohio avers that, to do otherwise, will ultimately result in conflicts between state and federal laws (*Id.* at 3, 4).

In addition to the arguments raised by AT&T Ohio and Cincinnati Bell, OTA avers that, by referencing a particular federal law, the potential exists for the Commission to interpret or enforce a federal rule. Contrary to the arguments raised by the telephone industry, OCC believes that the incorporation by reference of the FCC's rules enables the Commission to enforce the referenced rules and provides an incremental degree of certainty (OCC Reply Comments at 3).

2. Decision

The Commission highlights the fact that, in many cases, specific sections of federal law specifically delegate particular authority to state commissions. For example, 47 U.S.C. 251, 47 U.S.C. 252, and 47 U.S.C. 253 recognize the rights of states to engage in specific jurisdictional activities. The Commission has incorporated such references in the rules for the purpose of codifying and enforcing such authority.

Additionally, the Commission calls attention to the fact that Section 121.75, Revised Code, requires that, in lieu of the text of referenced rules or statutes, an applicable rule or statute can be referenced provided that the reference identifies the specific date of the version that is being incorporated. Therefore, the Commission dismisses the general objections discussed *supra*. Further, the Commission *sua sponte*, amends the proposed Rule 4901:1-7-02 to address this issue.

As a result of this amendment, the effective dates referenced in each citation to the U.S.C. and C.F.R. in the proposed rules shall be removed and, accordingly, only one rule (adopted Rule 4901:1-7-02) will require revision to the extent that there are subsequent revisions to the U.S.C. or C.F.R.

B. Need for Enforcement Provisions

1. Comments

OCC observes that the proposed rules do not include enforcement procedures similar to those proposed in the Commission's Entry of March 1, 2001, Case Nos. 99-998/99-563 (i.e., proposed Rules 4901:1-6-47 to 4901:1-6-52) and adopted in the Commission's Opinion and Order of February 13, 2003, at 39, 40. OCC believes that enforcement provisions, including those related to forfeitures, should be adopted pursuant to Sections 4901.13, 4905.04, 4905.05, and 4905.54, Revised Code. OCC asserts that in light of the continued reduction of regulatory burdens on telephone companies, there is an increased need for rules specific to compliance and enforcement (OCC Initial Comments at 3-8). OCC states that it is important that the Commission make clear how it will administer compliance and enforcement of its rules, including provisions for a public process whereby input is provided by customers and their representatives (*Id.* at 7). AT&T Ohio and Embarq both consider OCC's request for enforcement procedures in the proposed rules to be unnecessary (AT&T Ohio Reply Comments at 1; Embarq Reply Comments at 2).

2. Decision

Although the Commission acknowledges that the proposed rules do not include specific enforcement provisions similar to those included in the 99-998/99-563 February 13, 2003, Order, the Commission now believes that it is not necessary to include a specific rule regarding enforcement. Rather, the Commission concludes that its enforcement authority is already adequately addressed through the applicable statutory provisions (e.g., Sections 4905.04, 4905.46, 4905.54, 4905.57, and 4905.73 and the Minimum Telephone Service Standards Chapter 4901:1-5, O.A.C.). Additionally, the Commission points out that the issue of enforcement is not a carrier-specific issue but, rather, extends to all aspects of the operations of telephone companies. Therefore, the inclusion of an enforcement rule in the carrier-to-carrier rules would be too limiting in scope.

III. DISCUSSION OF SPECIFIC RULES

After reviewing the staff's proposal and the initial comments and reply comments, the Commission hereby adopts appropriate rules, attached as the appendix to this opinion and order, for the purpose of addressing issues related to carrier-to-carrier activities.

For the sake of clarity, within this opinion and order, the staff's proposed rules will be referred to as the proposed rules, while the new rules will be referred to as the adopted rules. We will directly address only the more salient initial/reply comments. In some respects, we agree with certain comments and have incorporated them into the rules without specifically addressing such changes in detail in this order. To the extent that a comment was raised and is neither addressed in this order nor incorporated into our adopted rules, it has been rejected. To the extent that the commentors did not discuss portions of the staff's proposed rules, unless otherwise noted, such portions are incorporated into our adopted rules. For the sake of clarity, within this opinion and order, the rule references are proposed rules unless otherwise noted. A discussion of the substantive comments by rule is denoted below.

A. Proposed Rule 4901:1-7-01 Definitions

In its proposal of November 21, 2006, staff proposed a number of definitions related to the provision of carrier-to-carrier activities. These definitions are limited to the specific purposes of Chapter 4901:1-7, O.A.C. As described below, comments were filed in response to some of staff's proposed definitions. In some cases, commentors are seeking to have definitions included in this rule in addition to those proposed by the staff.

1. Staff proposed definition of an "affiliate"

In proposed Rule 4901:1-7-01(A), staff defines an "affiliate" as:

> [A] person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten percent.

(a) Comments

Both AT&T Ohio and OTA argue that a ten-percent equity interest threshold is inappropriate and should be modified to conform with the 20 percent standard incorporated in Section 4905.402, Revised Code (AT&T Ohio Initial Comments at 5, 6; OTA Initial Comments at 3; OTA Reply Comments at 2). OTA contends that the Commission staff has failed to provide any explanation as to why the definition of an "affiliate" should differ from that of Section 4905.402, Revised Code.

(b) Decision

The Commission concludes that the proposed definition of an "affiliate" is appropriate and should be adopted. While AT&T Ohio and OTA advocate for maintaining the 20 percent standard incorporated within Section 4905.402, Revised Code, they have incorrectly confused the issue of change in ownership, as addressed in Section 4905.402, Revised Code, with the definition of an affiliate for the purposes of complying with the requirements of the Telecommunications Act of 1996 (1996 Act). In support of this determination, the Commission notes that its adopted definition parallels that of Section 153(1) of the 1996 Act.

2. Staff proposed definition of facilities-based competitive local exchange carrier (CLEC)

In proposed Rule 4901:1-7-01(F), staff proposed to define facilities-based CLEC as:

> [W]ith respect to a service area, any local exchange carrier that uses facilities that it owns, operates, manages or controls to provide basic local exchange services to consumers on a common carrier basis; and that was not an incumbent local exchange carrier on the date of the enactment of the 1996 Act. Such carrier may partially or totally own, operate, manage or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of the incumbent local exchange carrier's local exchange services.

(a) Comments

OCTA asserts that the proposed definition of facilities-based CLEC is unduly restrictive due to the fact that it fails to account for the fact that there are carriers who own their facilities and provide service to an affiliated or unaffiliated entity in order that such entity can provide service to consumers. Therefore, OCTA proposes that the proposed definition be amended to reflect as follows:

> [W]ith respect to a service area, any local exchange carrier that was not an incumbent local exchange carrier on the date of the enactment of the 1996 Act and uses facilities it partially or totally owns, operates, manages or controls. Carriers not included in such classification are carriers providing service(s) solely by (1) resale of the incumbent local exchange carrier's local exchange services; or (2) use of incumbent local carrier's unbundled network elements and the incumbent's wholesale switching product(s) (formerly referred to as "UNE-Platform")

(OCTA Initial Comments at 1).

AT&T Ohio objects to OCTA's proposed definition of "facilities-based CLECs" inasmuch as it is too narrow and will likely result in some members of the OCTA avoiding regulation. AT&T Ohio dismisses the rationale relied upon by OCTA and opines that the proposed rule would not prevent a carrier from providing service to an affiliated entity. Additionally, AT&T Ohio asserts that OCTA's language conflicts with the definition contained in Rule 4901:1-4-01(G), O.A.C., and the Commission's determination in Case No. 06-1013-TP-BLS that CLECs that lease the unbundled network element platform (UNE-P) or Local Wholesale Complete (LWC) from an ILEC are facilities-based providers (AT&T Ohio Reply Comments at 3).

(b) <u>Decision</u>

Upon a review of the arguments raised, the Commission concludes that there is no need to amend the proposed definition of a "facilities-based CLEC." Specifically, we find that OCTA's concerns are unfounded and that the proposed definition does not have the limitations that OCTA purports that it does. Furthermore, the Commission has previously determined, as pointed out by AT&T Ohio, that CLECs leasing UNE-P or LWC are facilities-based CLECs.

3. <u>Staff proposed definition of incumbent local exchange carrier (ILEC)</u>

In proposed Rule 4901:1-7-01(G), staff proposed to define an "ILEC" as:

> [W]ith respect to its traditional service area, any facilities-based local exchange carrier that: (a) on the date of enactment of the 1996 Act, provided basic local exchange service in such traditional service area; and (b)(i) on such date of enactment was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R 69.601(b); or (ii) is a person or entity that, on or after such date of enactment, became a successor or assignee of a member described in clause (b)(i).

(a) <u>Comments</u>

AT&T Ohio asserts that the definition of an ILEC contains a typographical error and that the word "assignee" be changed to "assign" in order to track the language of the definition of "CLEC" in proposed Rule 4901:1-7-01(D).

(b) <u>Decision</u>

The Commission agrees with the concerns raised by AT&T Ohio. Therefore, the proposed definition of ILEC will be amended accordingly. Additionally, in order to be consistent with the definition of ILEC in the recently approved MTSS rules (Case No. 05-

1102-TP-ORD) and retail rules (06-1345-TP-ORD), the Commission *sua sponte* amends the proposed definition of ILEC as reflected in the appendix to this opinion and order.

4. Staff proposed definition of local exchange carrier

In proposed Rule 4901:1-7-01(K), staff proposed to define local exchange carrier (LEC) as:

> [A]ny facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to consumers on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a CMRS under 47 U.S.C. 332(c), as effective November 1, 2006, except to the extent that the federal communications commission (FCC) finds that such service should be included in the definition of such term.

(a) Comments

OCTA asserts that the word "basic" should be removed from the first sentence of the definition inasmuch as the term is unduly restrictive (OCTA Initial Comments at 2). AT&T Ohio rejects this recommendation due to the fact that the effect of removing the word "basic" is unclear and may have unintended consequences (AT&T Ohio Reply Comments at 3).

(b) Decision

Upon a review of the arguments raised, the Commission concludes that there is no need to amend the proposed definition of a "local exchange carrier." Additionally, the definition is consistent with the definition of a LEC in the recently approved retail rules, Case No. 06-1345-TP-ORD, *In the Matter of the review of Chapter 49001:1-6, Ohio Administrative Code.*

5. Staff proposed definition of number portability

In proposed Rule 4901:1-7-01(N), staff proposed that "number portability" should be defined as:

> [T]he ability of users of telecommunications services to retain existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one physical location to another.

(a) Comments

AT&T Ohio, Cincinnati Bell, and Embarq each point out that staff's proposed definition conflicts with the definition incorporated in 47 C.F.R. 52.21 which provides that:

> [T]he ability of users of telecommunications services to retain, at the same location, existing telephone numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

AT&T Ohio recommends that the Commission should adopt the FCC's definition of number portability (AT&T Initial Comments at 5, 6). Similarly, Cincinnati Bell, OTA, Embarq, and Time Warner propose that the Commission replace staff's proposed definition with that of the FCC's in order maintain conformity with federal law on number portability and the manner in which it has actually been implemented (Cincinnati Bell Initial Comments at 3; OTA Initial Comments at 3; Embarq Initial Comments at 2; Time Warner Reply Comments at 2).

OCTA approves of staff's proposed definition of "number portability" and believes that customers should be entitled to retain existing numbers when changing carriers and moving from one location to another within the same rate center. In support of its position, OCTA points out that, while the federal rules arguably do not currently impose LNP obligations on carriers when customers move from one location to another, the federal rules do not prohibit the states from clearly establishing such a requirement. Therefore, consistent with Section 253 of the 1996 Act, OCTA believes that the Commission should adopt staff's proposed definition of "number portability" (OCTA Reply Comments at 2).

(b) Decision

Upon a review of the record, the Commission determines that the proposed number portability definition should be amended to be consistent with 47 C.F.R. 52.21(l), as reflected in the appendix to this opinion and order.

6. Staff proposed definition of "telephone company"

In proposed Rule 4901:1-7-01(R), staff stated that, for purposes of Chapter 4901:1-7, O.A.C., telephone company shall have:

> The same meaning as defined in division (A)(2) of section 4905.03 of the Revised Code.

(a) Comments

AT&T Ohio calls attention to the fact that the proposed definition of "telephone company" in proposed Rule 4901:1-7-01(R) follows the Ohio Revised Code definition in Section 4905.03, while proposed Rule 4901:1-7-02 references 47 U.S.C. 251 and 252 which incorporates the term "telecommunications carrier." In light of this distinction, AT&T Ohio opines that the Commission should define and utilize the term "telecommunications carrier" in order to track the federal law and the FCC rules, which address many of the same areas covered by the proposed rules (AT&T Ohio Initial Comments at 6).

(b) Decision

Upon a review of AT&T Ohio's comments, the Commission determines that the proposed definition of a "telephone company" should be amended as reflected in the appendix to this opinion and order for the purpose of incorporating the definition of a telecommunications carrier consistent with 47 U.S.C. 153(44).

7. Additional Definition Related Matters

(a) Comments

AT&T Ohio and Time Warner both identify the fact that, while the proposed rules utilize the term "end user customer," the term itself is not defined. In lieu of the undefined term, these commentors recommend the use of the term "consumer," which is defined in the Minimum Telephone Service Standards (MTSS) (AT&T Ohio Initial Comments at 5, Time Warner Reply Comments at 2).

(b) Decision

Upon considering this issue, the Commission concludes that in lieu of "end user customer" or "consumer," the term "customer" is adopted and added to Rule 4901:1-7-01, as reflected in the attached appendix. The Commission notes that this term is consistent with the definition of "customer" as incorporated in the Commission's recently adopted Minimum Telephone Service Standards rules, Case No. 05-1102-TP-ORD, *In the Matter of the Review of the Commission's Minimum Telephone Service Standards Found in Chapter 4901:1-5 of the Ohio Administrative Code.*

B. Proposed Rule 4901:1-7-02 General Applicability

Staff proposed the following provisions relative to this proposed rule:

> The carrier obligations found in rules 4901:1-7-03 to 4901:1-7-29 of the Administrative Code, shall apply to all telephone companies pursuant to 47 U.S.C. 251 and 252, as effective on November 1,

> 2006, including those companies not operating pursuant to a qualifying alternative regulation plan pursuant to rules 4901:1-4-01 to 4901:1-4-12 of the Administrative Code.

1. Comments

Verizon asserts that the general applicability rules should be amended in order to delete the phrase "effective on November 1, 2006", and to replace it with the following sentence: "These rules must be interpreted consistently with federal law and, in the event of a conflict between these rules and federal law, federal law shall prevail" (Verizon Initial Comments at 3). AT&T Ohio and the Small ILECs concur with the comments of Verizon (AT&T Ohio Reply Comments at 4; Small ILECs Reply Comments at 3, 4).

2. Decision

With respect to Verizon's proposal to delete the phrase "effective November 1, 2006," as discussed earlier in this Opinion and Order, the Commission amended Rule 4901:1-7-02 to address this issue.

Upon a review of the comments filed specific to Verizon's proposed language regarding a conflict between these rules and federal law, the Commission concludes that matters pertaining to a potential conflict of laws are best addressed at the time that such issues specifically arise, and not in the context of these rules.

Finally, the Commission, *sua sponte*, has revised the proposed rule for the purpose of including provisions specific to the issue of waivers. Therefore, adopted Rule 4901:1-7-02(C), (D), and (E) has been added as reflected in the attached appendix.

C. Proposed Rule 4901:1-7-03 Toll Presubscription

1. Proposed 4901:1-7-03(B)

Staff proposed the following language with respect to this rule:

> Any other charges, such as generic service order charges, are explicitly prohibited.

(a) Comments

AT&T Ohio asserts that while the proposed rule may have the intent of limiting charges to local presubscribed interexchange carrier (LPIC) charges, the proposed language is unclear as to whether additional charges, such as service order charges, can apply. While recognizing that Rule 4901:1-6-22(B), O.A.C., permits carriers to assess service order charges, AT&T Ohio would support a statement that no charge except for the permitted LPIC change charge may apply to an LPIC change (AT&T Ohio Initial Comments at 6).

(b) Decision

In order to properly clarify that the intent of the proposed rule is to limit the toll presubscription change charges to the LPIC change charge, proposed Rule 4901:1-7-03(B) is amended as follows:

> Charges other than the permitted LPIC change charge are explicitly prohibited from applying to any LPIC change.

2. Proposed Rule 4901:1-7-03(C)

Staff proposed the following language with respect to this rule:

> When a customer switches both the customer's interLATA PIC and LPIC at the same time the LEC providing presubscription shall waive one-half of the applicable LPIC change charge without regard to whether the change was performed through manual or electronic means.

(a) Comments

AT&T Ohio and OTA both aver that the proposed rule should clarify that the waiver of one-half of the proposed LPIC change charge should not apply when a company-specific, cost-supported charge has been approved according to proposed Rule 4901:1-7-03(G) (AT&T Ohio Initial Comments at 6, 7; OTA Initial Comments at 3). AT&T Ohio proposes that proposed Rule 4901:1-7-03(C) be amended to include the following language:

> This requirement does not apply when a company-specific, cost-supported charge has been approved under Division (G)

(AT&T Ohio Initial Comments at 6, 7).

(b) Decision

The Commission agrees with AT&T Ohio's and OTA's recommendation that the proposed rule should be revised in order to clarify that the waiver of one-half of the proposed LPIC change charge should not apply when a company-specific, cost supported charge has been approved, reflecting the cost savings of processing both orders at the same time. Accordingly, the adopted rule reflects such clarification, as reflected in the appendix to this opinion and order.

3. Proposed Rule 4901:1-7-03(F)

Staff proposed the following language with respect to this rule:

> A new subscriber shall be permitted to make an initial LPIC selection, which may include choosing NoLPIC, free of charge at the time the subscriber initiates local service. If the subscriber is unable to make a selection at the time of initiation of local service, the LEC offering presubscription shall read a random listing of all available toll providers to aid in the subscriber's selection. If, after being read the list of all available toll providers, the subscriber still does not make an LPIC selection, the LEC shall inform the subscriber that unless a selection is made by the subscriber at the time local service is initiated, the LEC will, as a default, place the subscriber in a NoLPIC status.
>
> The LEC shall further inform the subscriber that until such time as the subscriber informs the LEC of the subscriber's LPIC selection, the subscriber will not have an intrastate, intraLATA toll provider and, as a result, will be required to dial a carrier access code to route an intrastate, intraLATA toll call to the carrier of the subscribers' choice or make other arrangements. Subscribers making an LPIC selection after the time of local service initiation may be assessed an LPIC change charge subject to paragraphs (A) to (D) of this rule.

(a) Comments

OCC notes that, while current Local Service Guideline X(E)(4) prohibits a local service provider from assessing a service order charge for a consumer's initial selection of an intraLATA toll carrier during the first 90 days of service, proposed Rule 4901:1-7-03(F) does not contain such a provision. OCC submits that the absence of such a provision is not in the best interests of consumers inasmuch as consumers will be forced to make immediate and possibly uneducated decisions as to who will provide their intraLATA toll service in order to avoid a service order charge. OCC believes that subscribers require additional time in order to perform the necessary research prior to selecting the best long distance plan (OCC Initial Comments at 8). OCC believes that, at a minimum, a 60-day grace period is necessary in order to provide subscribers with at least 2 billing cycles to assess the best calling plan for their needs (*Id.* at 9).

AT&T Ohio and OTA both dispute OCC's proposal to continue to allow a grace period for the purpose of selecting an intraLATA toll carrier. The commentors opine that

OCC 's contention is unsupported, especially in light of the fact that subscribers are exposed to direct mail, telemarketing, and television ads from long distance providers (AT&T Ohio Reply Comments 3-5; OTA Reply Comments at 2). Additionally, AT&T Ohio asserts that it is unreasonable to expect LECs to absorb the costs of making subsequent changes without a charge, especially when the same obligation is not placed on its competitors (AT&T Ohio Reply Comments at 5).

(b) Decision

The Commission determines that the proposed rule should be approved without any amendment. In reaching this determination, the Commission concludes that, as a result of the maturation of the long distance market and the extensive mass marketing efforts by carriers, consumers are more informed today of their telecommunications choices than they were 10 years ago when we first established presubscription guidelines. Therefore, the Commission believes that there will be very few occasions in which a customer initiates local service and does not simultaneously select a toll provider. Additionally, the Commission notes that absent company-specific rates authorized following the review of a cost study, the maximum permitted primary interexchange carrier change charge is $5.50. Moreover, this primary interexchange carrier change charge is often picked up by the primary interexchange carrier and is not the responsibility of the consumer.

D. Proposed Rule 4901:1-7-04 Rural Telephone Company Exemption

1. Proposed Rule 4901:1-7-04(A)

Staff proposed the following with respect to this rule:

> A rural telephone company is subject to the provisional rural telephone exemption referenced in of [sic] 47 U.S.C. 251f(1), as effective on November 1, 2006, until such time as the rural telephone company receives a bona fide request (BFR) for interconnection and the commission reviews such request. Should a nonrural telephone company sell, devise, assign, or otherwise transfer any portion of its facilities to a rural telephone company and such facilities are subject to an interconnection agreement(s) at the time of the transfer, such facilities shall remain subject to all obligations of the existing interconnection agreement(s). However, such facilities will not be subject to requirements referenced in 47 U.S.C. 252(i) as effective on November 1, 2006.

(a) Comments

OTA contends that the first sentence of (A) is erroneous in that a rural telephone company's exemption continues until it is terminated in accordance with 47 U.S.C. 251(f), and not before (OTA Initial Comments at 4).

While the proposed rule discusses what happens when a nonrural telephone company sells or assigns any portion of its facilities to a rural telephone company, OCTA believes that the proposed rule does not address a number of potential scenarios including: (1) the ramifications if the rural company no longer qualifies for the rural exemption as a result of the inclusion of the additional lines and (2) the ramifications when an existing interconnection agreement in the nonrural telephone company's service area that is purchased by the rural telephone company expires (OCTA Initial Comments at 3).

OCTA opines that automatically assuming that a rural exemption applies and potentially requiring a requesting carrier to submit a bona fide request pursuant to Section 251(f) of the 1996 Act simply because the service area was purchased by a rural company is detrimental to competition and only benefits the rural ILEC. OCTA advocates that the Commission allow for the adoption of an interconnection agreement pursuant to Section 252(i) in the scenario under which the facilities of a nonrural telephone company are purchased by a rural telephone company (*Id.*). Further, OCTA believes that any prohibition on the application of Section 252(i) rights following the purchase of nonrural telephone facilities by a rural telephone company is inappropriate inasmuch as the transferred facilities are still subject to an interconnection agreement that was approved under Section 252.

(b) Decision

Upon a review of the filed comments, the Commission determines that, consistent with the attached appendix, Rule 4901:1-7-04(A) should be modified to reflect that the rural telephone exemption continues until it is terminated pursuant to Section 251(f) of the 1996 Act.

Additionally, the Commission finds that proposed Rule 4901:1-7-04(A) should be modified to provide that, with respect to the purchased service territory, any carrier requesting to opt-in to an existing interconnection agreement pursuant to 47 U.S.C. 252(i) should have the ability to do so. At the same time, the Commission believes that the rural telephone company should have the ability to present the Commission with arguments as to why it should not provide such interconnection arrangement pursuant to adopted Rule 4901:1-7-04 or adopted Rule 4901:1-7-07(A)(3). In the event that the existing interconnection agreement is to expire, the interconnected telephone company should file the appropriate request seeking a subsequent interconnection agreement. In the interim, the continued offering of service should be addressed consistent with the terms of the existing interconnection agreement.

Consistent with the above discussion, proposed Rule 4901:1-7-04(A) is modified as reflected in the attached appendix.

2. Proposed Rule 4901:1-7-04(B)

Staff proposed the following language with respect to this rule:

> If a rural telephone company receives a BFR for interconnection services or network elements and it seeks to maintain a rural telephone company exemption, it shall file an unclassified (UNC) application with the commission within fifteen calendar days after receiving the request. The telephone company requesting interconnection shall file a response within fifteen calendar days after the rural telephone company's application for exemption. The burden of proof regarding the termination of a rural telephone company exemption rests upon the telephone company requesting interconnection.

(a) Comments

OCTA, Verizon, and Small ILECs all assert that inasmuch as, pursuant to Section 251(f)(1), a BFR for interconnection is the triggering event for the lifting of rural telephone company's exemption of Section 251(c), and not Section 251(a) or 251(b), proposed Rule 4901:1-7-04(B) should be amended to clarify that "interconnection" refers to "interconnection pursuant to Section 47 USC 251(c)" (OCTA Initial Comments at 3, 4; Verizon Initial Comments at 4; Small ILECs Reply at 4). Additionally, Verizon and OCTA also point out that, rather than the proposed rule placing the burden of proof on the telephone company requesting interconnection, the burden of proof should be placed on the rural telephone company seeking to maintain the rural exemption. In support of its position, OCTA references 47 C.F.R. 51.405 (Verizon Initial Comments at 4, 5; OCTA Initial Comments at 4).

(b) Decision

Upon review of comments regarding the burden of proof for the continuation of a rural telephone company's exemption pursuant to Section 251(f)(1), the Commission determines that no revision is necessary to this rule. The Commission notes that 47 C.F.R. 51.405 has been vacated by the Eight Circuit Court, *Iowa Utilities Bd.; v. FCC* 219 F.3d 744, 762 (8th Cir., July 18, 2000), and consistent with prior Commission decisions, the burden of proof that the Commission should terminate the exemption is on the requesting telephone company. See, e.g., *In the Matter of the Application and Petition in Accordance with Section II.A.2.b of the Local Service Guidelines Filed by: The Champaign Telephone Company, Telephone Service Company, The Germantown Independent Telephone Company and Doylestown Telephone Company*, Case Nos. 04-1494-TP-UNC, 04-1495-TP-UNC, 04-1496-TP-UNC, and 04-1497-TP-UNC, Order on Rehearing, at 6 (April 13, 2005). Further, Commission agrees with those commentors advocating that a Section 251(f) exemption is limited to the obligations of Section 251(c), and does not extend to the obligations of Section 251(a) and (b). The adopted rule reflects such clarification.

3. Proposed Rule 4901:1-7-04(C)

Staff proposed the following language with respect to this rule:

> The Commission will review such application for exemption and the response to it, on an individual case basis within one hundred twenty calendar days of the Commission's notice of the BFR for interconnection.

(a) Comments

OCTA opines that the phrase "on an individual case basis" is susceptible to more than one interpretation. OCTA believes that the Commission should clarify that once the exemption is terminated, it is terminated for all subsequent competitors (OCTA Initial Comments at 5). Additionally, OCTA avers that the Commission should consider limiting exemptions pursuant to Section 251(f) in those cases in which the rural carrier provides video programming or has been granted alternative regulation (*Id.* at 5).

b. Decision

The Commission concludes that the proposed rule does not require any additional modification. The phrase "on an individual case basis" already contemplates that evaluation of each rural exemption request will involve consideration of the entire record, including, but not limited to, those factors identified by OCTA. The Commission clarifies that once an exemption is terminated, it is terminated relative to all subsequent competitors as well.

E. Proposed Rule 4901:1-7-06 Interconnection

1. Proposed Rule 4901:1-7-06(A)(2)

Staff proposed the following language with respect to this rule:

> Each telephone company shall make available interconnection to other telephone companies for the mutual exchange of traffic upon receipt of a request for interconnection, unless the commission orders a waiver of this requirement.

(a) Comments

OCTA expresses concern that the proposed rule appears to expand the interconnection requirements for nonILECs inasmuch as 47 U.S.C. 251(a) permits nonILECs to interconnect either directly or indirectly with other carriers. Therefore, OCTA believes that the following language should be adopted:

> Each telephone company shall make available direct or indirect interconnection to other telephone companies for the mutual exchange of traffic upon receipt of a request for interconnection, *unless the Commission orders a waiver of this requirement*

(OCTA Initial Comments at 5).

(b) Decision

The Commission notes that the obligations of 47 U.S.C. 251(a) are already incorporated in proposed Rule 4901:1-7-06(A)(1). Therefore, no further action with respect to OCTA's proposed amendment is necessary.

2. Proposed Rule 4901:1-7-06(A)(4)

Staff proposed the following language with respect to this rule:

> Each incumbent local exchange carrier (ILEC) shall provide, for the facilities and equipment of any requesting telephone company, interconnection with the ILEC's network, for the transmission and routing of telephone exchange traffic, exchange access traffic, or both. Also, a telephone company requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an ILEC's network is not entitled to receive interconnection pursuant to 47 U.S.C. 251c2 as effective on November 1, 2006.

(a) Comments

OCTA recommends that the Commission insert the phrase "regardless of whether the requesting telephone company is providing retail service directly to end users or services as a wholesale provider of telecommunications services" in the second line after the phrase "requesting telephone company" and before the phrase "interconnection with." OCTA believes that this modification is necessary in order to be consistent with the Commission's decision in Case No. 04-1494-TP-UNC, In re *Champaign Telephone Company* (OCTA Initial Comments at 6).

(b) Decision

The Commission determines that no revision to the proposed rule is necessary. Specifically, we find that OCTA's concerns are unfounded and that the proposed rule does not have the limitations that OCTA's recommended modification is attempting to address.

3. Proposed Rule 4901:1-7-06(A)(5)

Staff proposed the following language with respect to this rule:

> Each ILEC shall provide interconnection to requesting telephone companies at any technically feasible point within its network, with quality at least equal to that provided by that ILEC to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection pursuant to 47 C.F.R. 51.305, as of November 1, 2006. Any telephone company requesting interconnection to the existing network may do so via feature group D (FGD) type interconnection or via a mutually agreed upon interconnection arrangement. Interconnecting carriers may use one-way trunks or two-way trunks to interconnect for traffic transport and termination if it is technically feasible. Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to: a) collocation at the premises of the LEC; and b) meet point interconnection arrangements pursuant to rule 4901:1-6-11 of the Administrative Code, 47 C.F.R. 51.321 and 51.323, as of November 1, 2006. If a meet point arrangement is requested from the ILEC for the purpose of exchanging traffic with the ILEC, each carrier is required to bear a reasonable portion of the forward-looking economic costs of the arrangement.

(a) Comments

OCTA objects to requiring the use of "FGD" as a default type of interconnection if a mutually agreed upon interconnection arrangement is not reached. In support of its position, OCTA points out that is an expensive proposition for the exchange of local traffic. OCTA submits that, rather than imposing such a limitation, the 1996 Act requires ILECs to permit interconnection in any technically feasible manner, and does not depend on the ILEC's agreement as a prerequisite (OCTA Initial Comments at 6). AT&T Ohio agrees that the use of FGD trunks should be limited and should not be the default type of interconnection. AT&T Ohio states that it uses interconnection trunks where appropriate (AT&T Ohio Reply Comments at 8).

OCTA seeks clarification that the collocation requirement as a technically feasible method of obtaining interconnection or access to UNEs is limited to the "ILEC's premises" and not all "LECs' premises" (OCTA Initial Comments at 7). Embarq recommends that in a meet point billing arrangement, the ILEC's financial obligation should be limited to 50 percent of the cost of providing facilities for the meet point route or the entire cost of providing the facilities to the exchange boundary (Embarq Initial Comments at 2, 3). In response to Embarq's proposed language, OCTA states that an ILEC is responsible for the entire cost of building facilities to the point of interconnection at which the CLEC establishes interconnection with the ILEC. Therefore, in order to be consistent with the FCC's *First Local Competition Order*, ¶553, OCTA opines that Embarq's proposed language should be amended to delete "or the entire cost of providing the facilities to the exchange boundary, whichever is less" (OCTA Reply Comments at 4). AT&T Ohio submits that the current billing arrangements negotiated by the LECs are reasonable and effective (AT&T Ohio Reply Comments at 7).

(b) Decision

With respect to the concerns raised by OCTA and AT&T Ohio for use of feature group D (FGD) interconnection, the Commission concludes that no revision to the proposed rule is necessary. In reaching this decision, the Commission points out that the proposed rule reflects that "[a]ny telephone company requesting interconnection to the existing network may do so via feature group D (FGD) type interconnection or via a mutually agreed upon interconnection arrangement" (emphasis added). Therefore, there is no requirement that FGD be considered as the default manner of interconnection. Rather, FGD is one available option. In reaching this decision, the Commission recognizes that, pursuant to the 1996 Act, an ILEC must evaluate the technical feasibility of an interconnection request before it agrees to interconnect.

With respect to OCTA's request for clarification regarding collocation obligations, the Commission has amended the proposed rule to reflect that the collocation requirement is limited to the ILEC's premises. Relative to Embarq's proposed language limiting the ILEC's financial obligations specific to meet point billing arrangements, the Commission finds that the proposed change should be denied due to the fact that each meet point billing arrangement is unique. The Commission has, however, modified the proposed rule to reflect that each carrier is responsible for the network costs on its side of the meet point.

4. Proposed Rule 4901:1-7-06(A)(7)

Staff proposed the following language with respect to this rule:

> Interconnection rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a request for interconnection or through arbitration. Such arrangements shall be processed pursuant to rule 4901:1-7-07 of the Administrative Code.

(a) Comments

Pac-West asserts that the interconnection pursuant to Section 252 of the 1996 Act is only applicable to interconnection or traffic exchange negotiations between two carriers if one of them is an ILEC, and is not applicable to negotiations between two CLECs or between a CLEC and a commercial mobile radio service (CMRS) provider. Consistent with its position, Pac-West believes that nonILECs are explicitly allowed to interconnect indirectly without a negotiated interconnection agreement (Pac-West Initial Comments at 1, 2). Therefore, Pac-West believes that it would be best for carriers to tariff intercarrier arrangements so as to serve as default terms and conditions in the event that the parties do not execute traffic exchange agreements (*Id.* at 4).

In response to Pac-West, AT&T Ohio responds that CLECs should not unilaterally be allowed to tariff reciprocal compensation rates without regard to the ILECs rates or the type of traffic impacted. In support of its position, AT&T Ohio points out that CLECs cannot have higher reciprocal compensation rates unless they are cost justified (AT&T Ohio Reply Comments at 6).

(b) Decision

The Commission rejects Pac-West's recommendation for the tariffing of reciprocal compensation by CLECs due to the fact that it is inconsistent with the requirement of Section 251(b)(5) of the 1996 Act requiring that all LECs "establish reciprocal compensation arrangements (emphasis added). " Specifically, the Commission points out that the reciprocal arrangements requirement of Section 251(b)(5) of the 1996 Act combined with the "symmetrical rates" requirement of 47 C.F.R. 51.711(a)(1) cannot be achieved if every CLEC or CMRS provider is allowed to unilaterally tariff the reciprocal compensation rates it charges other CLECs or CMRS providers. We also find that 47 C.F.R. 51.711(a)(2) contemplates agreements between telephone companies including CLECs and CMRS providers.

5. Proposed Rule 4901:1-7-06(B)

Staff proposed the following language with respect to this rule:

(B) A bona fide request (BFR) for interconnection shall be in writing and shall detail the specifics of the request. A BFR for interconnection should include, as applicable, the following:

(1) The requested meet point(s) or, in the alternative, the requested point(s) of collocation (e.g., the end office, tandem, etc.).

(2) For each collocation point: a forecast of DS-0, DS-1, DS-3, and OC-n cross connects required during the term of the agreement; the requested interface format (electrical vs. optical); and the type of collocation requested. If physical collocation is requested, the applicant must specify the amount of space required; whether the requested form of collocation is caged, shared caged, cageless or adjacent collocation; and DC power and environmental conditioning requirements.

(3) For each meet point, a description of the requested interface equipment.

(4) The requested reciprocal compensation arrangement for transport and termination of traffic.

(5) A detailed description and forecast of any required unbundled network elements and the requested method of access to the operation support system associated with these unbundled network elements.

(6) Any requested access to the poles, ducts, conduits, and rights-of-way owned or controlled by the providing carrier.

(7) Any requested white pages directory listings for the customer of the requesting carrier's telephone exchange service.

(8) Any requested access to 9-1-1, E-9-1-1, directory assistance, operator service, and any required dialing parity capability.

(9) A list of the requested telecommunications services to be offered for resale by the providing carrier, and required operational support systems associated with the resale of these telecommunications services.

(10) If transit traffic functionality is required, the requested method(s) of providing that functionality at each requested point of interconnection.

(11) The requested completion date.

(12) A list including names, phone numbers, and areas of responsibility of the requesting carrier's contact persons for the negotiation process.

(a) Comments

OCTA asserts that the requesting carrier would not have the appropriate level of details required by the proposed rule until subsequent to the commencement of the negotiation. Therefore, OCTA recommends that the requisite BFR items for interconnection should be limited to the contact information and the proposed reciprocal compensation arrangement (OCTA Initial Comments at 7). AT&T Ohio, on the other hand, believes that the list of detailed requirements related to a request for interconnection should be maintained and argues that it and other carriers need such information to process interconnection requests (AT&T Reply Comments at 8).

One Communications recommends the removal of the term "BFR" inasmuch as it is used by the industry for those situations corresponding to unique arrangements (One Communications Initial Comments at 2-4). AT&T Ohio agrees with the removal of the term "BFR" (AT&T Ohio Initial Comments at 9; AT&T Ohio Reply Comments at 8). Small ILECs believe that the use of the term BFR should be modified to include only interconnection agreements that are submitted by a carrier seeking to terminate the rural exemption (Small ILECs Reply Comments at 3). Additionally, XO believes that the entire rule should be stricken in light of the fact that the 1996 Act leaves the interconnection process open to negotiations between the parties (XO Initial Comments at 2-4).

(b) Decision

The Commission believes that the request for interconnection requirements needs to be streamlined. The requirements in the adopted rule contains the minimum information necessary to allow a carrier to evaluate the request for interconnection. This information is necessary for all carriers, especially those that have not established a process for addressing interconnection requests. We also conclude that it is reasonable to remove the term "BFR" from the reference to typical requests for interconnection. The adopted rules reflect its use only for unique requests for interconnection or a request for interconnection to a rural telephone company.

F. Proposed Rule 4901:1-7-07 Establishment of Interconnection Agreements

1. Proposed Rule 4901:1-7-07(A)

Staff proposed the following language with respect to this rule:

A) Processing a bona fide request (BFR) for interconnection

(1) Any request for an interconnection agreement pursuant to 47 U.S.C. 251 and 252, as effective on November 1, 2006, must be submitted via facsimile, overnight mail, or hand-delivery to the appropriate personnel or division within the providing telephone company's organization in charge of negotiating interconnection arrangements between carriers. The requesting carrier must also notify simultaneously the chief of the telecommunications division of the utilities department of the commission.

(2) The providing telephone company must respond within seven calendar days by letter served upon the requesting carrier and the chief of the telecommunications division of the utilities department of the commission simultaneously. This letter shall acknowledge the receipt of the request and set the time for the first negotiation meeting to be held within fifteen calendar days from the date the providing telephone company received the request. In that letter, the providing telephone company shall provide a list of names, phone numbers, and areas of responsibility of contact persons for the negotiation

process, and a list of any additional information necessary to process such a request.

(3) Within fifteen calendar days of receiving a request for interconnection, the providing telephone company shall inform the requesting carrier, in writing, of any known requested interconnection or network element that is not technically feasible to provide, with a detailed explanation of such finding.

(4) A telephone company receiving a BFR for interconnection pursuant to 47 U.S.C. 251 and 252, as effective on November 1, 2006, shall provide in writing, as soon as feasible but in no event later than ninety calendar days from the receipt of an initial request for an interconnection agreement, the requesting carrier with a comprehensive quote including, at a minimum, as applicable: the description of each interconnection and network element and/or resold service to be provided; rates to be charged for each item; and the installation schedule for each component provided.

(5) As soon as feasible, but no later than fifteen calendar days from the receipt of the quote from the providing telephone company for an initial request for an interconnection agreement, the requesting carrier shall respond in writing by accepting or rejecting the quote for each interconnection and network element and/or resold service sought to be provided.

(6) At any point in time during the negotiation, any party to the negotiation may ask the commission to participate in the negotiation and to mediate any differences arising during the course of the negotiation, pursuant to rule 4901:1-7-08 of the Administrative Code.

(7) An incumbent local exchange carrier (ILEC) shall make available without unreasonable delay to any requesting telephone company any agreement in its entirety to which the ILEC is a party that is approved by the commission pursuant to 47 U.S.C. 252, as

effective on November 1, 2006, upon the same rates, terms, and conditions as those provided in the agreement and pursuant to 47 C.F.R. 51.809 as effective on November 1, 2006.

(a) Comments

AT&T Ohio asserts that the proposed rule establishes too detailed of a time schedule rather than allowing companies more flexibility in the interconnection request process. AT&T Ohio posits that, as proposed, this rule will result in innumerable requests for an extension of time. AT&T Ohio opines that the establishment of dates should be left to the parties. AT&T Ohio believes that the Commission would be better served by managing and resolving the issues presented, and not micromanaging the process (AT&T Ohio Initial Comments at 7).

Embarq contends that the proposed rule is an inappropriate attempt to supersede the established federal process. Embarq also asserts that the proposed rule engages in an inadequate micro-management of the process for requesting interconnection. For example, Embarq points out that, while the proposed rule attempts to identify acceptable ways to submit requests for interconnection, it fails to include e-mail as one of the accepted methods. Therefore, Embarq recommends that the proposed rule should simply reference the federal rules (Embarq Initial Comments at 3).

XO dismisses the requirement of a requesting carrier to notify simultaneously the chief of telecommunications division when requesting an interconnection agreement. Specifically, XO believes that such a request is superfluous and results in nothing other than paperwork and expense. XO points out that, at the time that a carrier seeks arbitration, the carrier will have to produce documentation demonstrating that the negotiation was initiated. Rather than the established time frames set forth in the proposed rule, XO recommends that the negotiation time frames should be left up to the parties (XO Initial Comments at 5, 6). OTA and Time Warner both believe that there is no apparent reason for the modification of the current time frames that exist today relative to the processing of BFRs (OTA Initial Comments at 5; Time Warner Reply Comments at 2, 3).

Pac-West believes that the phrase "without unreasonable delay" should be deleted from Rule 4901:1-7-07(A)(7) inasmuch as such provision has the effect of potentially delaying competition. In order to maximize a CLEC's ability to compete with the ILEC, Pac-West recommends that the proposed rule should be modified to reflect that the adoption of an approved interconnection agreement with any time remaining on its term is automatically effective once the CLEC provides notice to the ILEC of its intent to adopt the agreement. In support of its position, Pac-West points out that the terms and conditions of the underlying agreement have already been reviewed and approved by the Commission (Pac-West Initial Comments at 8-10).

Pac-West also believes that the proposed rule should address the possibility that, if a CLEC maintains that an ILEC is improperly asserting one of the exemptions pursuant to 47 CFR 51.809, the CLEC should be permitted to receive performance under the adopted agreement while the ILEC request for relief is pending (*Id.*). Additionally, Pac-West seeks clarification that a CLEC has a right to adopt such an interconnection agreement pursuant to Section 252(i) and then adopt any other available interconnection agreement at any point after that or initiate negotiation for a new replacement agreement, even if the term of the initial agreement has not expired (*Id.* at 10). Both Verizon and AT&T Ohio consider Pac-West's proposal to be unworkable (AT&T Ohio Reply Comments at 9; Verizon Reply Comments at 9, 10). Specific to Pac-West's contention that interconnection agreements should become effective solely upon a CLEC's request, Verizon states that even with adopted agreements, there are typically differences that must be settled specific to the parties and, therefore, agreement between the parties is necessary prior to adoption of any interconnection agreement (*Id.*).

(b) Decision

Upon considering the filed comments, the Commission has revised the proposed rule, as reflected in the appendix to this Opinion and Order, for the purpose of streamlining the interconnection process and providing parties with more flexibility during the negotiation of complex interconnection agreements. Specifically, the Commission has removed the time sensitive obligations of telephone companies and included e-mail as an acceptable manner to request interconnection. Additionally, we reject Pac-West's proposal for the automatic effectiveness of an interconnection agreement once the CLEC provides notice to the ILEC of its intent to adopt the agreement. First, the Commission points out that 47 C.F.R. 51.809 allows the ILEC the opportunity to deny a request for interconnection under Section 252(i) of the 1996 Act if certain criteria are met. Additionally, we agree with Verizon that a signed interconnection agreement is necessary before the agreement can be adopted.

2. Proposed Rule 4901:1-7-07(C)(5) and (D)(3)

Staff proposed the following language with respect to these rules:

4901:1-7-07(C)(5)

> Interconnection agreement amendments shall be effective upon execution. The amendment to the agreement shall be approved pursuant to the ninety day process set forth in paragraph (D)(3) of Rule 4901:1-7-07 of the Administrative Code.

4901:1-7-07(D)(3)

> In light of the limited legal test set forth in 47 U.S.C. 252(e)(2)(a) as effective on November 1, 2006, all negotiated interconnection agreements and all executed adoptions of existing interconnection agreements under 47 U.S.C. 252(i), as effective on November 1, 2006, as well as all amendments to such shall be effective upon filing with the Commission. All negotiated agreements shall be approved pursuant to the ninety day process set forth in 47 U.S.C. 252(e)(4). All arbitrated agreements shall be approved pursuant to the thirty day process set forth in 47 U.S.C. 252(e)(4).

(a) Comments

AT&T Ohio calls attention to the fact that there is an inconsistency between proposed Rule 4901:1-7-07(C)(5) and proposed Rule 4901:1-7-07(D)(3). Specifically, proposed Rule 4901:1-7-07(C)(5) provides that interconnection amendments are effective upon execution, while proposed Rule 4901:1-7-07(D)(3) states that they are effective upon filing (AT&T Ohio Initial Comments at 8). OCTA supports a rule that makes agreements effective upon filing. OCTA proposes additional language to clarify that implementation of the agreement can begin on the day after filing (OCTA Initial Comments at 8).

(b) Decision

In order to be consistent with the other rules, adopted Rule 4901:1-7-07(C)(4)[2] reflects that interconnection amendments are effective upon filing, not upon execution. Therefore, carriers can begin ordering facilities pursuant to an interconnection agreement once it is filed with the Commission.

3. Proposed Rule 4901:1-7-07(D)(2)

Staff proposed the following language with respect to this rule:

> All negotiated interconnection agreements must be filed with the commission within ten calendar days of execution and must contain an affidavit signed by the parties to the negotiated agreement that states that the agreement does meet the legal test of 47 U.S.C. 252(e)(2)(a) as effective on November 1, 2006.

---

2 Was previously proposed Rule 4901:1-7-07(C)(5).

(a) Comments

AT&T Ohio and Embarq both argue that the accompanying affidavit requirement is unnecessary and will only result in additional paperwork (AT&T Ohio Initial Comments at 8; Embarq Initial Comments at 3). Additionally, AT&T Ohio contends that requiring the filing of interconnection agreements within 10 calendar days is unrealistic and should be eliminated (AT&T Ohio Initial Comments at 8).

(b) Decision

Upon a review of the comments filed with respect to this issue, the Commission finds that, as reflected in the appendix to this opinion and order, the proposed rule has been amended to remove the affidavit requirement and, where appropriate, other repetitive provisions. The Commission rejects AT&T Ohio's request to amend the requirement that all negotiated interconnection agreements must be filed within ten days of execution.

4. Proposed Rule 4901:1-7-07(E)

Staff proposed the following language with respect to this rule:

> A providing telephone company is entitled to recover costs associated with an interconnecting carrier's BFR for initial and subsequent interconnection arrangements as well as a request for an amendment of an existing interconnection arrangement. These costs relate to an evaluation of the unique request for interconnection, examination of facilities for special arrangements, and technical and economic feasibility assessments. If the BFR fee exceeds five hundred dollars, the providing telephone company must allow, upon request by the requesting carrier, payment of that fee over no more than twelve months whether or not the requesting carrier proceeds with the request. The commission, through the arbitration process, will resolve disputes concerning the amount of the BFR fee. The BFR fee shall be subject to commission review and approval.

(a) Comments

Time Warner, OCTA, XO, AT&T Ohio, and Cincinnati Bell all contend that there is no need for a rule that generally allows one party to an interconnection agreement to impose its costs on another party, regardless of which party initiates the request for interconnection. In support of their position, the parties point out that the obligation to interconnect is a mutual obligation that is imposed on all carriers. The commentors recognize that interconnection costs may be imposed if a party requests an unusual or novel interconnection arrangement or feature that requires an added degree of time or investigation (Time Warner Initial Comments at 2; OCTA Initial Comments at 8; XO Initial Comments at 7; AT&T Ohio Reply Comments at 8; Cincinnati Bell Reply Comments at 2).

(b) Decision

Upon consideration of the comments filed relative to this issue, the Commission believes that the proposed rule should be amended to reflect that a providing telephone company should have the opportunity to recover its costs associated with evaluating a unique request for interconnection, examination of facilities for special arrangements, and technical and economic feasibility assessments. Proposed Rule 4901:1-7-07(E) is amended accordingly.

G. Proposed Rule 4901:1-7-08 Negotiation and Mediation of 47 U.S.C. 252 Interconnection Agreements

Proposed Rule 4901:1-7-08(A)

Staff proposed the following language with respect to this rule:

> All telephone companies have the duty to negotiate in good faith the terms and conditions of their agreements. The Commission will presume that a party who refuses to provide information about its costs or other relevant information upon request of another party has not negotiated in good faith provided that, where appropriate, the other party agrees to execute a reasonable confidentiality agreement. This presumption of failure to negotiate in good faith is rebuttable. The commission will resolve disputes concerning the furnishing of information upon complaint of a party to the negotiation and may impose sanctions where appropriate.

1. Comments

AT&T Ohio objects to the proposed rule inasmuch as the company believes that it creates a rebuttable presumption that a party who refuses to provide information about its costs or other relevant information is not negotiating in good faith. AT&T Ohio avers that no such presumption exists consistent with the 1996 Act (AT&T Ohio Initial Comments at 9).

2. Decision

Considering the arguments raised by AT&T Ohio with respect to this rule, the Commission finds that there is no basis to modify the proposed rule. However, the Commission, *SUA SPONTE*, finds that to the extent that a party believes that the information requested by the other party is irrelevant or not readily available, these arguments can be raised before the Commission on a case-specific basis. Therefore, the proposed rule should be amended accordingly.

H. Proposed Rule 4901:1-7-09 Arbitration of 47 U.S.C. 252 Interconnection Agreements

1. Proposed Rule 4901:1-7-09(A)

Staff proposed the following language with respect to the proposed rule:

> Arbitration is an alternative dispute resolution process whereby parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a recommended decision to the commission. Any party to the negotiation of an interconnection agreement may, during the period from the one hundred thirty-fifth to the one hundred sixtieth day (inclusive) after the date on which a local exchange carrier receives a request for negotiation, petition the commission to arbitrate any open issues.

(a) Comments

OCTA contends that the proposed rule should specify that the window for arbitration should be 135 days after an ILEC receives a request consistent with 47 U.S.C. 252(b).

(b) Decision

Considering the arguments raised with respect to this issue, the Commission finds that there is no basis to modify the proposed rule inasmuch as the proposed rule already provides the requested clarification.

2. Proposed Rule 4901:1-7-09)(G)(2)

Staff proposed the following language with respect to the proposed rule:

> Within ten calendar days of the filing of a request for arbitration, the arbitrators will schedule a conference to be held within twenty-five calendar days after the filing of the request. The purpose of the conference is to plan an arbitration hearing date, identify witnesses to be presented at the hearing, discuss possible admissions or stipulations of uncontested matters, clarify the issues to be resolved, identify additional information needed to reach a decision on the unresolved issues, schedule the production of

> relevant documents and other information, clarify issues which have been resolved, discuss or rule on any other appropriate procedural matters, and consider any other procedures that will expedite the arbitration process. The arbitration panel is authorized to order any party to provide information that it deems necessary to reach a decision on the unresolved issues and to establish the time period for providing the information.

(a) Comments

OCTA contends that this rule should be amended to allow for the requisite conference to be scheduled within twenty-five calendar days after the nonpetitioning party has filed its response. OCTA points out that, pursuant to the proposed rule, the petitioning party will have no opportunity to review or prepare a meaningful plan or discussion of any additional issues identified by the nonpetitioning party. OCTA believes that its proposal will afford both parties to an arbitration the opportunity to fully participate in the conference (OCTA Initial Comments at 9, 10).

(b) Decision

The Commission agrees with OCTA's concerns regarding the fact that it may be difficult for the requesting carrier to be prepared for a prehearing conference without first seeing the response to the arbitration request. Therefore, the proposed rule shall be amended to schedule the prehearing conference thirty calendar days after the filing of the arbitration petition in order allow the petitioning party five calendar days to review the response to the arbitration petition prior to the prehearing conference. In reaching this determination, we find that OCTA's proposal is unreasonable inasmuch as it would restrict the Commission's flexibility in establishing an arbitration schedule that complies with the federal law.

3. Proposed Rule 4901:1-7-09(G)(4)(l)

Staff proposed the following language with respect to the proposed rule:

> A commission arbitration award shall be issued not later than nine months after the date on which the local exchange carrier received the B.F.R. for interconnection pursuant to 47 U.S.C. 252(b)(4)(c) as effective on November 1, 2006.

(a) Comments

AT&T Ohio and Time Warner submit that the proposed language should be amended to allow for agreed upon extensions of the various deadlines in the arbitration process (AT&T Ohio Initial Comments at 10; Time Warner Reply Comments at 3). Additionally, AT&T Ohio and Cincinnati Bell propose that the rule be changed to include provisions for the issuance of an arbitration panel report and an exception process where appropriate (AT&T Ohio Initial Comments at 10, 11; Cincinnati Bell Initial Comments at 4; Time Warner Reply Comments at 3). In support of their request, the companies contend that for more complex arbitrations with multiple issues, the panel report and the exceptions process have been useful in clarifying or narrowing the issues in dispute and the parties' positions on the issues.

(b) Decision

Upon considering the comments filed, the Commission agrees that adopted Rule 4901:1-7-09 should be amended to provide parties with the flexibility to seek by mutual agreement an extension of the specified arbitration deadlines. Adopted Rule 4901:1-7-09(G)(7) has been added for the purpose of including this provision.

In regard to the request to allow for a panel report and corresponding objections, the Commission determines that such a process is unnecessary and should be denied. Based on our experience in numerous arbitration proceedings, parties should be able to explain clearly their positions on disputed issues in their arbitration petition and response. Parties then have another opportunity to explain their positions in their arbitration package filing. Any further information requested by the arbitration panel can be provided during the arbitration hearing. Accordingly, the adopted arbitration rules provide the ultimate opportunity for parties in a given arbitration to explain complex issues.

I. Proposed Rule 4901:1-7-11 Collocation

1. Proposed Rule 4901:1-7-11(B)

Staff proposed the following language with respect to the proposed rule:

> Regardless of floor space availability, ILECs shall provide virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises if requested by the interconnecting carrier, to the extent it is technically feasible.

(a) Comments

OTA objects to the requirement of offering virtual collocation regardless of floor space availability and recommends that it be removed (OTA Initial Comments at 5). Embarq has serious concerns about the proposed language due to its belief that the language requires ILECs to build facilities, make costly rearrangements of existing equipment, or otherwise make rearrangements that are not required in the federal law

(Embarq Initial Comments at 3, 4). Rather than the proposed rule, Embarq and AT&T Ohio submit that the adopted rule should simply state that collocation is governed by applicable federal law (Id. at 4; AT&T Ohio Reply Comments at 10).

(b) Decision

Upon a review of the filed comments relative to this issue, the Commission determines that it is necessary to clarify the proposed rule. However, contrary to the arguments raised by OTA, Embarq, and AT&T Ohio, the proposed rule does not require ILECs to build facilities or to engage in the costly rearrangement of existing equipment. Rather, the proposed rule simply requires ILECs to make virtual collocation available if requested by a CLEC, even if the ILEC has floor space available for physical collocation. Such an approach does not conflict with the federal law and facilitates competitive entry and efficient use of floor space. Accordingly, the adopted rule reflects such clarification.

J. Proposed Rule 4901:1-7-12 Compensation for the Transport and Termination of Telecommunications Traffic

1. Proposed Rule 4901:1-12(A)(3)

Staff proposed the following language with respect to the proposed rule:

> Internet service provider (ISP) traffic:
>
> Compensation for the transport and termination of internet service provider traffic shall be addressed in arbitration cases, until the commission or the federal communications commission (FCC) otherwise establishes a generic policy.

(a) Comments

AT&T Ohio notes that, since the issuance of the proposed language, the FCC has addressed the issue of internet service provider-bound traffic and continues to address intercarrier compensation issues in various dockets. In lieu of the proposed language, AT&T Ohio submits that the adopted rule should provide that compensation for the transport and termination of internet service provider traffic shall continue pursuant to the policies established by the FCC (AT&T Ohio Initial Comments at 11). While Small ILECs conceptionally agree with AT&T Ohio, they believe that there should be some Commission oversight in the event that there is inconsistent interpretation of any FCC policies and rulings (Small ILEC Reply Comments at 5).

(b) Decision

Upon consideration of the issue, the Commission finds that there is no need to amend the proposed rule. The Commission points out that, pursuant to the 1996 Act, the Commission is obligated to address intercarrier compensation issues in the individual arbitration cases until such time that the FCC establishes a final policy, which, to date, the FCC has not done. The proposed rule properly reflects this obligation.

2. Proposed Rule 4901:1-7-12(B)

Staff proposed the following language with respect to this rule:

> All telephone companies exchanging reciprocal compensation traffic and switched access traffic shall measure minutes-of-use (MOU) for compensation purposes if technically and economically feasible. However, telephone companies that are unable to measure traffic terminating on their network may use an allocation factor between the types of traffic in order to bill the originating telephone company. All telephone companies shall be required to maintain such records of traffic measurement, which will be subject to audits for validation of traffic jurisdiction upon request of the interconnecting telephone company. The commission, at its discretion in an arbitration proceeding, may require the interconnecting telephone companies to use separate dedicated trunk groups for reciprocal compensation, intraLATA switched access, and interLATA switched access traffic transport.

(a) Comments

OTA points out that a minutes-of-use measurement is not operationally necessary if bill and keep is the agreed upon compensation arrangement. Therefore, OTA submits that the proposed rule should be amended in order to eliminate the compelled measurement of traffic in those cases in which it is unnecessary and wasteful (OTA Initial Comments at 6).

Embarq recommends that the last sentence of proposed Rule 4901:1-7-12(B) should be amended in order to require interconnecting telephone companies to use separate dedicated trunk groups for reciprocal compensation unless otherwise ordered by the Commission (Embarq Initial Comments at 4). AT&T Ohio objects to Embarq's recommendation due to the belief that it limits the ability of party's to best utilize their resources. Rather, AT&T Ohio believes that there is no reason for the last sentence of the proposed rule due to the belief that it is unnecessary for the rule to state what the Commission might order in a specific arbitration proceeding (AT&T Ohio Reply Comments at 10). Verizon, OCTA, and Time Warner object to Embarq's proposal due to the belief that such issues are more appropriate for negotiations and the Commission's consideration in arbitration proceedings (Verizon Reply Comments at 8; OCTA Reply Comments at 5; Time Warner Reply Comments at 3).

(b) Decision

With respect to OTA's concerns regarding the recording of minutes-of-use, the Commission agrees with OTA's comments and has amended the proposed rule to reflect that minutes-of-use should be measured unless the companies have mutually agreed to a different arrangement in the interconnection agreement.

The Commission rejects Embarq's proposal to require interconnecting telephone companies to use separate dedicated trunk groups for reciprocal compensation unless otherwise required. In reaching this decision, the Commission determines that the proposed rule as written will promote negotiation of alternative efficient arrangements and does not mandate a single arrangement.

3. Proposed Rule 4901:1-7-12(C)

Staff proposed the following language with respect to this rule:

(C) Traffic subject to reciprocal compensation

(1) Telecommunications traffic exchanged between LECs

As a LEC establishes its own local calling area(s), the perimeter of the local calling area of the ILEC with which the LEC is requesting to establish reciprocal compensation arrangement shall constitute the demarcation for differentiating reciprocal compensation traffic versus access traffic for the purpose of that reciprocal compensation arrangement. Such local calling area of the ILEC with which the LEC is requesting to establish reciprocal compensation arrangement shall include non-optional extended area service (EAS) approved by the commission while excluding optional EAS arrangements. Any customer call originating and terminating within the boundary of such ILEC local calling area shall be subject to reciprocal compensation.

(2) Telecommunications traffic exchanged between a LEC and a commercial mobile radio service (CMRS) provider that, at the beginning of the call, originates and terminates within the same major trading area as defined in 47 C.F.R. 24.202a, as effective on November 1, 2006, of the FCC rules shall be subject to reciprocal compensation.

(a) Comments

Embarq requests that the Commission clarify that the end user call must physically both originate and terminate within the boundary of the ILEC local calling area in order to be subject to reciprocal compensation (Embarq Initial Comments at 4). Pac-West believes that Embarq's proposal should not be considered until there is an actual case or controversy presented to the Commission for resolution (Pac–West Reply Comments at 3). While AT&T Ohio concurs with Embarq's proposal in principle, it believes that it should be clarified due to the fact that an ILEC's local calling area can extend into the exchanges of other ILECs. Therefore, AT&T Ohio proposes that the proposed rule be amended to reflect that:

> Any end user call originating and terminating within the ILEC's exchanges that are in the same local calling area shall be subject to reciprocal compensation

(AT&T Reply Comments at 10).

(b) Decision

With respect to Embarq's proposal that the customer call must physically both originate and terminate within the boundary of the ILEC local calling area in order to be subject to reciprocal compensation, the Commission finds that the proposed rule reflects Embarq's position. However, upon considering the comments, the Commission has attempted to clarify this requirement in the adopted rule. The Commission disagrees with AT&T Ohio's recommendation that reciprocal compensation is applicable only to the extent that an end user call originates and terminates within the ILEC's exchanges that are in the local calling area and served by the ILEC. In reaching this decision, the Commission concludes that AT&T Ohio's proposed language discriminates between ILECs and CLECs serving the same local calling area for compensation purposes. In response to Pac-West's objections, the Commission notes that the scope of reciprocal compensation is a generic issue that is properly before the Commission in this proceeding.

4. Proposed Rule 4901:1-7-12(D)(1)

Staff proposed the following language with respect to this rule:

(D) Reciprocal compensation arrangements

(1) Rates, terms, and conditions for the transport and termination of reciprocal compensation traffic shall be established through interconnection agreements arrived at either through negotiation or through arbitration. An ILEC's rates for transport and termination of reciprocal compensation traffic shall be established, at the commission's discretion, on the basis of:

(a) The forward-looking economic costs of such offerings, using a cost study pursuant to rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code;

(b) Interim rates in an arbitration proceeding, as provided in rule 4901:1-7-18 of the Administrative Code; or

(c) A bill and keep arrangement, as provided in paragraph (D)(3) of rule 4901:1-7-12 of the Administrative Code.

(a) <u>Comments</u>

Pac-West and Verizon both advocate that the proposed rule be modified to allow interconnection and compensation arrangements between two CLECs to be included in intrastate access tariffs. In support of their position, Pac-West and Verizon opine that the negotiation and arbitration process provided in Section 252 does not apply to arrangements between two CLECs. The commentors also posit that, absent this provision, carriers opposed to compensating other carriers for use of their network may resist entering into traffic exchange agreements (Pac-West Initial Comments at 5, 6; Verizon Initial Comments at 6, 7). Verizon proposes that the tariff rate should be set no higher than the composite TELRIC-based compensation rate for the ILEC with more than 1 million access lines in the state in order for the rate to be reciprocal among CLECs and easy to administer (*Id.*).

OCTA opposes the tariffing of reciprocal compensation by CLECs. Specifically, OCTA submits that the tariffing of reciprocal compensation by CLECs is inconsistent with Section 251(b)(5). While acknowledging that there is no obligation for CLECs to negotiate with each other, OCTA avers that 47 CFR 51.711(a)(2) contemplates CLEC-to-CLEC agreements (OCTA Reply Comments at 6). Time Warner also opposes Pac-West and

Verizon's proposal based on its contention that compensation should be reciprocal and, of necessity, negotiated in the first instance (Time Warner Reply Comments at 4).

Small ILECs submit that the proposed rule should be amended to reflect that rural telephone companies are exempt from the duty to arbitrate Sections 251(c) and 252(b) of the 1996 Act until the rural exemption is terminated by the Commission (Small ILECs Reply Comments at 6).

(b) <u>Decision</u>

For the same reasons discussed in our discussion of proposed Rule 4901:1-7-06(A)(7) *supra*, Pac-West and Verizon's proposal to tariff reciprocal compensation rates for CLECs is denied. In regard to the exemption requested by Small ILECs, the request is denied. In reaching this decision, the Commission notes that the rural exemption upon which the Small ILECs' argument is premised does not extend to obligations set forth in Section 251(b)(5) of the 1996 Act.

5. <u>Proposed Rule 4901:1-7-12(D)(2)(c)</u>

Staff proposed the following language with respect to this rule:

> If both parties to the compensation arrangement are ILECs, or neither party is an ILEC, symmetrical rates for transport and termination of reciprocal compensation traffic shall be based on the larger telephone company's forward-looking costs.

(a) <u>Comments</u>

OCTA contends that, if both parties to a reciprocal compensation agreement are non-ILECs, they should be allowed to utilized any mutually agreed upon arrangement (OCTA Initial Comments at 10).

(b) <u>Decision</u>

In regard to this issue, the Commission recognizes that carriers are always free to negotiate mutually agreed upon rates, terms, and conditions. Consistent with this point, the Commission has added Rule 4901:1-7-12(F) to reflect that flexibility.

6. <u>Proposed Rule 4901:1-7-12(D)(2)(d)(ii)</u>

Staff proposed the following language with respect to this rule:

> Where the telephone company interconnects at the ILEC's end office, regardless of the geographical area served by the

telephone company switch, the telephone company is eligible for the end office termination rate only for the transport and termination of reciprocal compensation traffic over this end office interconnection facility.

(a) Comments

OCTA contends that the proposed rule should be deleted due to the fact that it is not consistent with the 47 C.F.R. 51.711(a)(3). Specifically, OCTA asserts that, rather than tying the application of tandem compensation to the type of switch used by the ILEC, pursuant to 47 C.F.R. 51.711(a)(3), in order to be entitled to the tandem rate, a carrier only has to demonstrate that its switch serves a comparable geographic area to that served by the ILEC tandem switch (OCTA Initial Comments at 11).

Pac-West asserts that the proposed rule should be amended in order not to restrict the ability of a CLEC to receive the tandem switch rate for terminating compensation. Rather than requiring a CLEC to physically serve customers across a geographic area comparable to the area served by the ILEC tandem switch prior to the CLEC receiving the tandem switch rate, Pac-West proposes that the proposed rule be rewritten to require only that the CLEC switch be capable of serving a geographic area comparable to that served by the ILEC tandem switch (Pac-West Initial Comments at 7).

In response to the proposals of both OCTA and Pac-West, Cincinnati Bell responds that these recommendations should be rejected inasmuch as they would result in asymmetrical reciprocal compensation. Cincinnati Bell points out that in several past arbitration cases, the Commission issued decisions consistent with the proposed rule (Cincinnati Bell Reply Comments at 4, 5).

(b) Decision

Upon considering the arguments raised with respect to the proposed rule, the Commission determines that no amendments are necessary. Specifically, the Commission finds that the proposed rule is consistent with 47 CFR 51.711(a), as well as ¶1090 of *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98 (rel. August 8, 1996). In particular, the Commission notes that reference to "serves" in proposed Rule 4901:1-17-12(D)(2)(d)(i) is consistent with the language of 47 C.F.R. 51.711(a)(3).

Additionally, the Commission notes that, with respect to the issue of interconnection at an end office, we have previously determined that if a CLEC is interconnected at an ILEC end office, the end office rate would apply. *See e.g.*, Arbitration Awards in Case Nos. 97-152-TP-ARB (August 14, 1997), 99-1163-TP-ARB (February 24, 2000), and 00-1532-TP-ARB (February 28, 2001). The Commission agrees with Cincinnati Bell that to conclude otherwise would result in the inequitable situation whereby CLECs would receive tandem switching compensation in all cases, but would only pay ILECs tandem compensation when the traffic was actually routed through the tandem switch, which would clearly violate provisions of 47 CFR 51.711(a)(1).

Finally, the Commission, *sua sponte*, determines that adopted Rule 4901:1-7-12(D)(2)(d), should be added in order to establish the manner of compensation in those scenarios in which neither party to the arrangement is an ILEC.

7. Proposed Rule 4901:1-7-12(D)(4)(c)

Staff proposed the following language with respect to this rule:

> The rate of a telephone company providing transmission facilities dedicated to the transmission of reciprocal compensation traffic between two telephone companies' networks shall recover only the costs of the portion of that trunk capacity used by an interconnecting telephone company to send traffic that will terminate on the providing telephone company's network. Such proportion may be measured during peak periods.

(a) Comments

Embarq submits that the proposed Rule 4901:1-7-12(D)(4)(c) should be revised to permit parties to negotiate an arrangement different than that established in the proposed rule. Embarq points out that Embarq and many CLECs have agreed to no shared facility costs on the ILEC side of the point of interconnection. Therefore, Embarq asserts that the adopted rule should provide for the appropriate flexibility.

(b) Decision

The Commission agrees with Embarq's recommendation and, as discussed earlier, has included Rule 4901:1-7-12(F) to provide for such flexibility.

8. Proposed Rule 4901:1-7-12(E)

Staff proposed the following language with respect to this rule:

> ILECs may block calls originated to and/or terminated from another telephone company that has not requested an interconnection agreement with the ILEC for the transport and termination of telecommunications traffic and has not been responsive to a BFR for interconnection, from the ILEC, for the transport and termination of telecommunications traffic, in

> accordance with 47 U.S.C. 251(b)(5) as effective on November 1, 2006.

(a) Comments

While applauding the intent of the proposed rule, OTA asserts that the language may not actually address the existing problem due to the fact that the uncompensated traffic is not technically identifiable at the end office in real time but, rather, is recognized after the fact. In lieu of the proposed rule, OTA recommends that the Commission consider a thorough investigation of the issue of phantom traffic.

Embarq posits that the proposed rule should be modified due to the fact that ILECs cannot seek interconnection with a CLEC. Specifically, Embarq proposes that the proposed rule be amended to read as follows:

> ILECs may block calls originated to and/or terminated from another telephone company that has not requested an interconnection agreement with the ILEC for transport and termination of telecommunications traffic or has not been responsive to a BFR for interconnection, from the ILEC, for transport and termination of telecommunications traffic, in accordance with 47 U.S.C. 251(b)(5), as effective on November 1, 2006.

In order to address the increasing problem of phantom traffic and its impacts on intercarrier compensation, AT&T Ohio recommends that the proposed rule be amended as follows:

> Except as otherwise provided by federal law, where technically feasible, a provider originating or forwarding an intrastate call that is terminated on the network of another provider shall do all of the following:
>
> (a) For originated calls, transmit the telephone number of the party originating the call. The telephone number shall be transmitted without alteration in the network signaling information.
>
> (b) For forwarded calls, transmit the telephone number of the party originating the call to the extent such information has been provided by the originating carrier. The telephone number shall be transmitted without alteration in the network in the network signaling information.

(c) For forwarded calls, the transiting provider is not responsible if the originating provider did not include the network signaling information

(AT&T Ohio Initial Comments at 12).

Time Warner believes that, inasmuch as all carriers are obligated to interconnect and establish compensation arrangements, the proposed rule should be amended to apply to both ILECs and CLECs (Time Warner Initial Comments at 3).

Small ILECs believe that the phantom traffic issue should be addressed by:

(a) requiring carriers to deliver accurate call detail records;

(b) requiring access tandem providers and interLATA toll providers to certify that they can distribute call detail records accurately and in a timely manner; and

(c) limit the traffic over EAS routes to the originally intended local traffic unless LECs specifically agree to establish a new trunk group for non-local traffic.

Pac-West believes that carriers should not refuse to handle traffic in the absence of an agreement. To the extent that carriers are allowed to refuse traffic, Pac-West proposes that ILECs be required to notify the carrier with which it exchanges reciprocal compensation traffic with prior to blocking the traffic (Pac-West Reply Comments at 1). AT&T Ohio rejects Pac-West's proposal and asserts that the Commission should not establish an obligation for a carrier to provide service in the absence of just and reasonable compensation (AT&T Ohio Reply Comments at 11).

(b) <u>Decision</u>

In regard to Embarq's contention that the proposed rule should be modified due to the fact that ILECs cannot seek interconnection with a CLEC, the Commission finds that Embarq's arguments should be denied. In reaching this determination, the Commission notes that the obligations of Sections 251(a)(1) and 251(b)(5) apply equally to all LECs to establish reciprocal compensation arrangements.

With respect to Time Warner's request to amend Rule 4901:1-7-12(E) so that its terms apply to both ILECs and CLECs, the Commission finds that the request is reasonable and should be granted. Therefore, proposed Rule 4901:1-7-12(E) is amended accordingly.

As to OTA's concerns regarding the provisions intended to address phantom traffic, while the Commission recognizes that the proposed rule is not a real-time solution, it will provide an incentive for the originating carrier to negotiate compensation arrangements with terminating carriers. Relative to AT&T Ohio's and Small ILECs' proposed language regarding phantom traffic, the Commission has revised proposed Rule 4901:1-7-12(B) to incorporate some of the offered language to the extent that the language is consistent with the Commission's prior decisions and policies.

In response to Pac-West's contention that carriers should not refuse to handle traffic in the absence of an agreement, this request is denied. Specifically, the Commission highlights the fact that all telecommunications carriers have the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers pursuant to Section 251(a)(1) and all LECs have the obligation to establish reciprocal compensation arrangements pursuant to Section 251(b)(5). The adopted rule allows the LEC to block calls from other telephone companies <u>only if</u> the other telephone companies did not request the establishment of a compensation arrangement <u>and</u> the other telephone companies are not responsive to a request from the LEC to establish a compensation arrangement (Emphasis added). Regarding Pac-West's request that a carrier provide notice prior to blocking of traffic from an entity that has not entered into a reciprocal compensation agreement, the Commission finds that this request is unreasonable and should be denied. Specifically, the Commission finds it unreasonable to require one LEC to notify another LEC regarding the failure to fulfill its obligations.

K. <u>Proposed Rule 4901:1-7-13 Transit Traffic Compensation</u>

1. <u>Proposed Rule 4901:1-7-13(A)</u>

Staff proposed the following language with respect to this rule:

> Transit traffic is traffic that originates on one telephone company's network, terminates on a second telephone company's network, and is transmitted using an intermediate third telephone company's network facilities.

(a) <u>Comments</u>

Embarq opines that proposed Rule 4901:1-7-13(A) should be amended for the purpose of clarifying that the appropriate focus should be on "local" traffic (Embarq Initial Comments at 4). OCTA objects to Embarq's proposal based on its belief that "there is simply no grounds for limiting a carrier's transiting obligations in this manner" (OCTA Reply Comments at 11).

(b) Decision

The Commission finds no basis for the proposed limitation. In reaching this determination, the Commission notes that no such distinction is provided for within the 1996 Act. Rather, Section 251(c)(2)(A) of the 1996 Act simply provides that ILECs have the obligation to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the LEC's network.

2. Proposed Rule 4901:1-7-13(C)

Staff proposed the following language with respect to this rule:

> A telephone company may not refuse to carry transit traffic if:
>
> 1) It is appropriately compensated for the use of its network facilities necessary to carry the transit traffic.
>
> 2) 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.

(a) Comments

OCTA recommends that the proposed rule be amended so that, consistent with Section 251(c) of the 1996 Act, it is only applicable to ILECs. Additionally, OCTA believes that the Commission should eliminate the requirement that "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," inasmuch as such requirement is impractical (OCTA Initial Comments at 12). Verizon objects to OCTA's proposed clarification due to its belief that the provisioning of transit traffic is not required by the 1996 Act (Verizon Reply Comments at 5).

OTA suggests that, consistent with Rule 12(E), the proposed rule be amended to reflect that "if no compensation is forthcoming, the transit traffic from that source should be blocked."

Pac-West and One Communications assert that it is unreasonable to allow an ILEC to refuse to carry transit traffic in those situations in which the originating and terminating companies have not executed a traffic exchange agreement (Pac-West Initial Comments at 4; One Communications Reply Comments at 6). In support of its position, Pac-West explains that, since most CLECs interconnect their networks indirectly through the ILEC tandem switches, the tandem transit service provided by ILECs is an essential function for competitive markets. Therefore, Pac-West opines that, while a rule making clear that an

ILEC is entitled to compensation for the use if its network is reasonable, permitting the ILEC to block traffic if transiting carriers do not have traffic exchange agreements is not (Pac-West Initial Comments at 4). Embarq and Verizon both object to the proposals of Pac-West and One Communications (Embarq Reply Comments at 3; Verizon Reply Comments at 10).

Embarq proposes that another scenario under which a telephone company may not refuse to carry transit traffic is if the originating and terminating telephone companies are both interconnected at the same tandem (Embarq Initial Comments at 5).

AT&T Ohio asserts the proposed rule is inappropriate due to the fact that transit traffic is not required to be provided pursuant to the 1996 Act inasmuch as the intermediate carrier is not terminating the local call. Further, AT&T Ohio submits that there is no legal obligation for transit compensation to be limited to a costing methodology (TELRIC) that was designed for the pricing of unbundled network elements. Based on its identified concerns, AT&T Ohio recommends certain modifications to the proposed rule, including that transit traffic rates be established pursuant to the negotiation of commercial agreements (AT&T Ohio Initial Comments at 12).

Small ILECs object to AT&T Ohio's recommendation and, instead, propose that transit compensation rates should either be negotiated pursuant to interconnection agreements or based on TELRIC, and should continue to be subject to Commission review and approval. Small ILECs also seek clarification that mandatory EAS routes should not be subject to transit traffic charges due to the fact that these routes were established for the purpose of exchanging local traffic only. Finally, Small ILECs believe that the proposed rule should be modified to require the transit provider to provide accurate originating carrier identification to the terminating party in order to allow for the proper billing of the original carrier (Small ILECs Reply Comments at 7, 8).

Pac-West, OCTA, Time Warner, and One Communications also object to AT&T Ohio's position regarding transit traffic. These entities contend that ILECs have an obligation under Sections 251(a) and (c)(2) of the 1996 Act to provide tandem transit service. They also assert that transit traffic should be priced at TELRIC since it is provided pursuant to the interconnection requirements of Section 251(c)(2) of the 1996 Act. (Pac-West Reply Comments at 4-8; OCTA Reply Comments at 8-11; Time Warner Reply Comments at 5; One Communications Reply Comments at 3-6). One Communications points out that the advocated proposition is consistent with the federal law and the Commission's prior decisions. One Communications believes that the Commission should require ILECs to continue to provide transit services to CLECs at rates incorporated in their interconnection agreements. If there are no rates for transit services contained in their interconnection agreements, One Communications recommends that the Commission allow for ILECs to charge switched access rates until the Commission sets TELRIC-based rates (*Id.*).

(b) Decision

In regard to OCTA's recommendation that the proposed rule be modified to apply only to ILECs, the Commission finds that this request should be denied. The Commission believes that, consistent with Section 251(a) of the 1996 Act, this rule should apply to all LECs, and not just ILECs. Additionally, the Commission notes that the broader application of the rule will also assist in addressing the concerns related to the issue of phantom traffic.

With respect to OTA's proposed language regarding the ability to block transit traffic, the Commission finds that the additional language is unnecessary inasmuch as it is already addressed in Rule 12(E).

Regarding the arguments raised by Pac-West and One Communications, the Commission finds that these arguments should be denied. The Commission points out that, similar to ILECs, CLECs are equally obligated to establish transport and termination agreements. We also find that the CLECs' ability to interconnect indirectly with each other does not negate their obligation to establish transport and termination arrangements among themselves. Accordingly, adopted Rule 4901:1-7-13(F) has now been added to clarify this obligation.

Although Embarq has proposed another scenario under which a telephone company cannot refuse to carry transit traffic, the Commission finds that the proposal should be rejected due to the fact that the company has failed to provide any justification for the added limitation on transit traffic arrangements.

As discussed *supra,* all telephone companies, including tandem providers, have the duty to interconnect with the facilities and equipment of other telephone companies pursuant to Section 251(a)(1) of the 1996 Act. Specifically, in the Commission's Arbitration Award of January 25, 2006, in Case No. 04-1822-TP-ARB, *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,* the Commission determined that transit service is governed by Section 251(c)(2)(A) of the 1996 Act (Arbitration Award at 33). Accordingly, the Commission determines that there is no basis to amend the pricing provisions of the proposed rule. Further, the Commission agrees with Small ILECs that the traffic exchanged over EAS routes between two LECs should not be subject to transit traffic charges.

3. Proposed Rule 4901:1-7-13(D)

Staff proposed the following with respect to the proposed rule:

> The intermediate telephone company(ies) must be compensated at the intermediate telephone company's total element long run incremental cost (TELRIC) based transit traffic compensation rates. Until such time as the commission approves telephone company-specific TELRIC-based transit traffic compensation rates, an intermediate telephone company should be compensated, on an interim basis, at its tariffed switched access rates subject to a true up of these rates.

(a) Comments

OTA asserts that, while the proposed rule requires that intermediate carriers must be compensated at TELRIC rates, in virtually all cases where negotiated rates exist, they are not TELRIC rates. Therefore, OTA recommends that the rule should provide for compensation at negotiated rates if they exist, and access rates if they do not exist (OTA Initial Comments at 7). Contrary to the arguments raised by OTA, OCTA believes that transit rates should be set at TELRIC (OCTA Reply Comments at 12). Pac-West objects to the proposed rule as it establishes access rates as the interim transit traffic rate until a TELRIC-based rate is approved by the Commission. In doing so, Pac-West contends that the proposed rule creates an incentive for the transit service provider to delay seeking a TELRIC-based rate. Accordingly, Pac-West recommends that the Commission set the interim rate at zero and establish a deadline for establishing a TELRIC-based rate (Pac-West Initial Comments at 4, 5).

Cincinnati Bell proposes that the Commission require that ILECs treat transit traffic destined to an affiliate CLEC within its territory as its own traffic and subject such traffic to reciprocal compensation rates, and not transit traffic rates (Cincinnati Bell Reply Comments at 6).

(b) Decision

With respect to OTA's request that the proposed rule be revised to allow for the negotiated transit nonTELRIC-based rates, the Commission notes that adopted Rule 4901:1-7-13(E) provides for such an option. The Commission rejects OTA's proposal to adopt the transiting telephone company's access rates instead of TELRIC rates in the event that a negotiated transit rate cannot be reached. We also reject Pac-West's proposal to set interim transit rates at zero. The Commission believes that the proposed transit traffic compensation rate is the appropriate benchmark and consistent with the 1996 Act.

With respect to Cincinnati Bell's proposal that the Commission require that ILECs treat transit traffic destined to an affiliate CLEC within its territory as its own traffic and subject such traffic to reciprocal compensation rates, the Commission concludes that rather than impacting existing arrangements, this issue is better addressed in the negotiation/arbitration of interconnection agreements when an in-territory CLEC affiliate of an ILEC requests interconnection with other LECs.

L. Proposed Rule 4901:1-7-14 Compensation for Intrastate Switched Access Traffic and Carrier-to-Carrier Tariffs.

1. Proposed Rule 4901:1-7-14(B)

Staff proposed the following language with respect to the proposed rule:

> The current prevailing ILEC intrastate switched access tariffs, including all rates, terms, and conditions pursuant to case nos. 83-464-TP-COI and 00-127-TP-COI, shall be used by ILECs for compensation for termination and origination of switched access telecommunications traffic originated from and/or terminated by other telephone companies.

(a) Comments

AT&T Ohio asserts that, rather than deferring to the FCC, the Commission needs to address small and rural ILEC access rates either in this proceeding or in Case No. 00-127-TP-COI, *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges* (00-127). AT&T Ohio advocates that the Commission should reduce all of the ILECs' access rates which were not addressed in 00-127 in order to be in parity with their interstate rate levels (AT&T Ohio Initial Comments at 14; AT&T Ohio Reply Comments at 13). Time Warner supports AT&T Ohio's comments that the Commission should begin to address the issue of small ILEC access rates (Time Warner Reply Comments at 6).

Similarly, Verizon believes that the Commission needs to address small and rural ILEC access rates. Verizon proposes that this be accomplished via a uniform rule moving all carriers' access rates to levels consistent with the access rates that the FCC adopted under the proposal of the Coalition for Affordable Local and Long Distance Services (CALLS). As part of its proposal, Verizon recommends a phased approach under which carriers would first reduce their intrastate access rates to their own interstate access levels, and then further reduce their rates to the CALLS level at fixed intervals (Verizon Initial Comments at 8-10).

Embarq, Small ILECs, CenturyTel, and Windstream oppose AT&T Ohio's and Verizon's comments regarding the need to address small and rural ILEC access rates (Embarq Reply Comments at 4; Small ILECs Reply Comments at 9; CentutryTel Reply Comments at 1; and Windstream Reply Comments at 1-5). Small ILECs, CenturyTel, and Windstream all assert that the Commission must consider the impact on the small and rural ILECs' cost recovery and end user rates. In light of the fact that intercarrier compensation issues are currently pending before the FCC, Small ILECs do not believe that the issue of small and rural ILEC access rates is appropriate to consider at this time in the context of this proceeding or in 00-127 (Small ILEC Reply Comments at 9, 10).

(b) Decision

Upon a review of the record, the Commission finds that AT&T Ohio's and Verizon's request for the Commission to address small and rural ILEC access rates in this proceeding or in 00-127 should be denied. In reaching this decision, the Commission determines that issues such as intrastate, switched access rates require a more focused and comprehensive analysis than can be provided within the context of this rulemaking proceeding. Additional issues that must be considered include company-specific revenue impact and the ultimate impact on customer rates.

2. Proposed Rule 4901:1-7-14(C)

Staff proposed the following language with respect to the proposed rule:

> When filing for certification under rule 4901:1-6-11 of the Administrative Code, facilities-based CLECs shall tariff the rates, terms, and conditions for compensation for the termination and origination of intrastate switched access traffic originated and/or terminated by other telephone companies. A CLEC shall cap its rates, on a rate element basis, at the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access traffic, unless:
>
> (1) The CLEC is a rural CLEC competing with a non-rural ILEC and its rates are capped at national exchange carrier association (NECA) access rates.
>
> (2) The CLEC is transitioning its rates to the benchmark rate in accordance with the FCC's order in CC Docket No. 96-92, released April 27, 2001.

(a) Comments

AT&T Ohio and Embarq each seek clarification as to whether the cap on CLEC switched access rates should also apply to an ILEC's "edge out" traffic, as well as an ILEC's CLEC affiliate traffic in other ILEC's exchanges. Specifically, the companies opine that the access rates applicable to "edge out" and affiliate traffic should be capped at the rates of the ILEC in whose territory they are operating (AT&T Ohio Initial Comments at 13; Embarq Initial Comments at 5).

Small ILECs oppose AT&T Ohio's and Embarq's recommendation to cap edge-out traffic access rates at the rate of the ILEC in whose exchange they are operating. The companies point out that edge-out ILECs must obtain their operating authority through a different process than CLECs, and that rather than utilizing the facilities of the underlying ILEC, edge-out ILECs are required to build-out their own facilities, thus, resulting in a different cost structure. Small ILECs also point out that the proposed rule contradicts the Commission's prior determination that Ayersville Telephone Company, not being a CLEC, was not required to mirror the existing ILEC's intrastate access charges. *In the Matter of the Application of Ayersville Telephone Company for Authority to Expand its Service Area,* Case No. 05-1443-TP-UNC, Finding and Order of May 10, 2006, at 7, 8.

One Communications objects to the requirement that a CLEC must cap its switched access rates at the rates of the ILEC in whose territory they are operating. One Communications believes that the proposed rule should be modified to allow CLECs to charge above the ILEC's rate if it can cost justify the higher rate. To the extent that a CLEC is required to lower its switched access rates as a result of the rule change, One Communications proposes that the adopted rule allow for CLECs to lower their rates in phases. AT&T Ohio and Verizon both object to One Communications' recommendation for eliminating the proposed cap on CLECs' access rates. The companies assert that market structure of access services does not allow competition from effectively disciplining terminating access prices (AT&T Ohio Reply Comments at 12; Verizon Reply Comments at 2-4). Contrary to One Communications' representations, Verizon submits that CLECs may not have higher access costs than ILECs. In support of its position, Verizon submits that CLECs have designed their networks in an efficient and cost effective manner using the most up-to-date technology. Verizon also points out that the FCC and other states have imposed price cap analogous to the proposed price caps proposed in this proceeding and that these reductions have been implemented without any known administrative difficulties (Verizon Reply Comments at 2-4).

Finally, AT&T Ohio recommends that proposed Rule 4901:1-7-14(C)(2) should be deleted due to the fact that the CLECs' transition to the benchmark rate in accordance with the FCC's order in CC Docket No. 96-92, released April 27, 2001, has already occurred.

(b) Decision

The Commission determines that AT&T Ohio's and Embarq's proposal to cap access rates applicable to "edge-out" and affiliate traffic at the rates of the ILEC in whose territory they are operating is reasonable and should be adopted as discussed herein. For the purpose of implementing the resulting reductions in the switched access for "edge-out" telephone phone companies, the Commission determines that the reduction should be phased-in in order to minimize the impact of a significant reduction. The phase-in should occur over a 3-year period pursuant to a 30-day ATA filing on the anniversary of this Order. The amount of each annual reduction should be in the amount of one-third of the total access reduction. This proceeding is the appropriate docket for the purpose of establishing switched access policy and rates for competitive entities.

Specifically, the Commission notes that, pursuant to newly adopted 4901:1-6-09, a small ILEC has the option of either operating out-of-territory as an ILEC or establishing a separate affiliate. The Commission finds that while the current access rate in a small ILEC's incumbent territory was designed to serve a particular purpose, the same circumstances do not exist when a small ILEC operates out-of-territory. The Commission believes that small ILECs choosing to operate outside of their service territory as the ILEC should not be allowed to unduly benefit from higher access rates than those small ILECs choosing to operate out of their service area as separate CLEC affiliates, or other certified CLECs operating in this area, which are all subject to the switched access cap rule.

With respect to One Communications' request to remove the requirement that a CLEC must cap its switched access rates at the rates of the ILEC in whose territory they are operating, the Commission finds that this request should be denied inasmuch as there is not competition for terminating access.

For the purpose of implementing the resulting reduction in switched access for CLEC companies, the Commission determines that there is no reason to phase the reduction over time inasmuch as the target rates are not significantly lower than the existing rate cap.[3] Pursuant to a 30-day ATA filing, CLECs will be required to reduce their intrastate switched access rates to the level of the applicable ILEC's current intrastate switched access rate. The ATA application shall be filed the earlier of: (a) in the first switched access tariff amendment filed by the CLEC for any purpose, or (b) no later than 90 days before the first anniversary of the effective date of these rules.

In regard to AT&T Ohio's recommended deletion of Rule 4901:1-7-14(C)(2), the Commission agrees that the requisite transition has already passed and, therefore, the proposed rule is revised to reflect such deletion.

M. Proposed Rule 4901:1-7-16 Unbundled Network Elements (UNEs)

Staff proposed the following language with respect to the proposed rule:

1. General unbundling requirements

(1) Each incumbent local exchange carrier (ILEC) shall have the duty to provide, to any requesting telephone company for the provision of telecommunications

---

3 Pursuant to the March 15, 2001, Entry on Rehearing in 00-127, CLECs' switched access rates are capped at the applicable ILEC's terminating access rates as of June 30, 2000.

service, nondiscriminatory access to network elements, as defined in 47 U.S.C. 251(c), (d)(2), as effective on November 1, 2006, on an unbundled basis at any technically feasible point consistent with 47 C.F.R. 51.307-321, as effective on November 1, 2006.

(2) Each ILEC shall provide UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to 47 U.S.C. 251(c)(3) and 252, as effective on November 1, 2006.

(B) General unbundling requirements

(1) Unbundled network element rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a bona fide request (BFR) for interconnection pursuant to rule 4901:1-7-06 of the Administrative Code, or through arbitration pursuant to rule 4901:1-7-09 of the Administrative Code.

(2) Unbundled network elements shall be priced at cost-based rates pursuant to the pricing standards set forth in rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code.

(a) Comments

AT&T Ohio asserts that the proposed rule is unnecessary and should be deleted due to the fact that it is nothing more than a repeat of the requirements of the federal law and the FCC's rules (AT&T Ohio Initial Comments at 15).

(b) Decision

The Commission determines that AT&T Ohio's recommendation that the proposed rule be deleted should be denied. In reaching this decision, the Commission believes that the proposed rule is necessary for the purpose of setting forth the process and procedures by which the Commission is implementing its delegated authority pursuant to the 1996 Act.

N. Proposed Rule 4901:1-7-17 Carrier-to-Carrier Pricing

1. Proposed Rule 4901:1-7-17(A)

Staff proposed the following language with respect to the proposed rule:

> (A) General principles
>
> (1) These standards apply to pricing of interconnection, unbundled network elements, methods of obtaining interconnection and access to unbundled network elements (including collocation), and reciprocal compensation. All of these provisions shall be referred to as "elements" for the purpose of this rule.
>
> (6) The ILEC shall prove to the commission's satisfaction that each element provided to a requesting telephone company does not exceed the forward-looking economic cost per unit of providing that element unless otherwise negotiated.

(a) Comments

AT&T Ohio believes that the proposed Rule 4901:1-7-17(A)(1) should include reference to Section 251 of the 1996 Act in order to comply with the FCC's rules and in order to limit the rule's application to unbundled network elements as reflected in the federal law (*Id.*). OTA believes that the phrase "the price for" should be inserted in the first sentence of proposed Rule 4901:1-7-17(A)(6). Therefore, OTA believes that the first sentence should state as follows:

> The ILEC shall prove to the Commission's satisfaction that the price for each element provided to a requesting telephone company does not exceed the forward-looking economic cost per unit of providing that element unless otherwise negotiated.

(OTA Initial Comments at 8).

(b) Decision

The Commission determines that the two proposed amendments to the proposed rule are reasonable and should be adopted. Therefore, proposed Rule 4901:1-7-17(A) shall be amended accordingly.

O. Proposed Rule 4901:1-7-19 Forward-looking Economic Costs

1. Proposed Rule 4901:1-7-19(B)

Staff proposed the following language with respect to the proposed rule:

(B) TELRIC

(2) Study period

The commission will consider a cost study period of five years to be reasonable. An incumbent local exchange carrier (ILEC) shall have the burden of proof, to the commission's satisfaction, that such study period would not be reasonable for a specific element.

(4) Cost of capital

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity) reflecting the risks of a competitive market, that includes a reasonable level of profit. An ILEC may use a unbundled network element-specific forward-looking cost of capital in calculating the TELRIC-based cost for that unbundled network element.

(a) Comments

AT&T Ohio avers that, due to changes in the market, in lieu of the proposed cost study period of five-years in proposed Rule 4901:1-7-19(B)(2), the Commission should allow the ILEC to propose and justify the applicable study period (AT&T Initial Comments at 16).

With respect to proposed Rule 4901:1-7-19(B)(4), Verizon recommends that additional language be added to the last sentence of the proposed rule to reflect that "An ILEC may use a unbundled network element-specific forward-looking cost of capital in calculating the TELRIC-based cost for that unbundled network element and such cost of capital may reflect any unique risks associated with new services that might be provided over that element" (Verizon Initial Comments at 11). OCTA opposes Verizon's proposed language and contends that it would allow the ILEC to over recover its costs and is contrary to the federal rules.

(b) Decision

The Commission finds no need to amend the proposed rule. The Commission notes that proposed Rule 4901:1-7-19(B)(2) already provides ILECs with the opportunity to propose and justify the study period for the applicable cost study. In regard to Verizon's proposed amendment to Rule 4901:1-7-19(B)(4), the Commission finds that the additional language is unnecessary as the intent of the offered language is already incorporated within the proposed rule.

P. Proposed Rule 4901:1-7-21 Resale

1. Proposed Rule 4901:1-7-21(A)(4)

Staff proposed the following language with respect to the proposed rule:

> ILECs are required to provide branding of services offered for resale.

(a) Comments

Embarq recommends that the proposed rule be clarified in order to reflect that the obligation to provide branding of services offered for resale applies only to operator and directory assistance services and not to all services offered by the ILEC to its retail customers (Embarq Initial Comments at 5).

(b) Decision

Embarq's proposed clarification is reasonable and should be granted. Proposed Rule 4901:1-7-21(A)(4) is amended accordingly.

2. Proposed Rule 4901:1-7-21(D)

Staff proposed the following language relative to the proposed rule:

> (D) Resale of lifeline
>
> LECs purchasing lifeline services for resale may only resell those services to qualifying lifeline customers and must pass

> on to the customer the full amount of the applicable lifeline discount. Where the reseller is not qualified for eligible telecommunications carrier status, the ILEC must sell lifeline service to that reseller at the wholesale rate established for basic local exchange service, less any lifeline discount for which the ILEC is eligible to be reimbursed by existing federal and/or state funding mechanisms.

(a) Comments

OCC opines that the second sentence of the proposed rule is not reasonable and should be deleted. In particular, OCC contends that ILECs should not be required to resell Lifeline services to carriers that are not designated as eligible telecommunications carriers. In support of its position, OCC asserts that an ILEC will not receive any discount for services sold to a non-ETC, even if the non-ETC customer is Lifeline-qualified (OCC Initial Comments at 10).

OTA submits that the proposed language is more confusing than the language that currently exists specific to the topic of Lifeline resale pursuant to *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 85-945-TP-COI (Entry of November 7, 1996). For the purpose of clarifying the proposed rule, OTA recommends that language be added indicating that "The LEC purchasing lifeline services for resale is responsible for certification and validation of the qualification of the lifeline customers it serves" (OTA Initial Comments at 8, 9).

(b) Decision

The Commission rejects OCC's proposed language deletion in light of the fact it will result in an unreasonable restriction on the resale of services, thus, limiting the choices for Lifeline customers. In regard to OTA's proposed language, we find that it is appropriate to clarify that the entity with which the customer has a relationship is the entity required to validate the eligibility of the Lifeline customer. The proposed rule shall be amended accordingly.

Q. Proposed Rule 4901:1-7-22 Customer Migration

1. Proposed Rule 4901:1-7-22(A)

Staff proposed the following language with respect to the proposed rule:

> (A) Each competitive local exchange carrier (CLEC) shall be required to provide systems to facilitate the migration of customers between local exchange carriers (LECs). Such

systems may be manual but must enable another LEC to migrate customers efficiently from that CLEC's network. Such systems shall include, but not be limited to: systems required to preorder, order, install, and repair, service, and billing for local service. CLEC responses to customer service record requests shall include information sufficient to facilitate customer migration between LECs. For the purposes of this rule, customer service information includes but is not limited to:

(1) Customer service records – detailed identification of the tariffed services to which the customer is subscribed.

(2) Service completion confirmation – the verification and notification that all tasks associated with a service order have been completed.

(3) Line loss notification – the notification to a LEC that an end-use customer has initiated a transition to another LEC.

(4) Completion notices – notice that all work to effect a customer migration has been completed.

(5) Circuit identification - the manner and system a carrier uses to identify physical circuits under its control, if applicable.

(6) 911 and directory listings.

(a) Comments

AT&T Ohio submits that the following time frames should be established for the purpose of CLECs providing customer service records, line loss notifications, and unbundled loop returns:

a. up to 20 loops within 24 hours,

b. more than 20 loops within 48 hours.

In support of its position, AT&T Ohio indicates that the proposed time frames are the same as those adopted by the Illinois Commerce Commission pursuant to 83 Ill. Admin. Code Part 731 (AT&T Ohio Initial Comments at 16, 17).

OCC points out that, while the proposed rule governs migration of customers between LECs, it appears to apply only to CLECs. Both OCC and One Communications submit that the proposed rule should be revised so that it also applies to both ILECs and CLECs (OCC Initial Comments at 10; One Communications Initial Comments at 7). OCC advocates that the intervals for both ILEC and CLEC migrations should be identical (OCC Reply Comments at 7). While Cincinnati Bell does not set forth specific provisioning criteria, it believes that CLECs should abide by the same time intervals that they have received from the ILECs (Cincinnati Bell Initial Comments at 5). Verizon considers AT&T Ohio's and Cincinnati Bell's proposed time frames to be unrealistic due to the fact that CLEC systems are manual and cannot provide customer service records in a matter of seconds similar to ILECs. Instead, Verizon recommends that customer service records be provided in 24 hours, firm order commitments be provided in 24 hours for up to 6 lines, and negotiated intervals for projects with a larger number of lines (Verizon Reply Comments at 6, 7). Finally, One Communications suggests that customer service records described in (A)(1) should include nonregulated services. One Communications also recommends that the word "tariffed" should be deleted from proposed Rule 4901:1-7-22(A)(1) so that the customer service records include information on all services, and not just those pertaining to tariffed services (One Communications Initial Comments at 7).

Finally, Verizon avers that the requirement to provide service completion confirmation, as set forth in proposed Rule 4901:1-7-22(A)(2), should be limited to service orders requiring "physical work" such as the moving of circuits (Verizon Initial Comments at 11, 12). In particular, Verizon avers that a service completion is not necessary when there is just a "port-out" request, such as a request for just local number portability (*Id.*).

(b) Decision

The Commission finds that there is no basis to change the proposed rule at this time. Specifically, the Commission finds that it is unreasonable for CLECs to comply with the same migration time frames as ILECs, especially in light of the fact that CLECs are not required to develop automated systems. Therefore, the principle of parity proposed by AT&T Ohio, Cincinnati Bell, and OCC is not practical. In reaching this decision, the Commission notes that adopted Rule 4901:1-7-22(E) will provide some level of protection to companies seeking to migrate customers by requiring that a company holding on to facilities for which migration is requested will have the burden of proof to demonstrate a valid reason for retaining the facilities, resources, or information in question.

As to OCC's concerns that the proposed rule should apply to both ILECs and CLECs, the Commission determines that the proposed rule is only applicable to CLECs. We note that ILECs' customer migration requirements are governed by 47 C.F.R. 51.319(g), as it relates to access to operation support systems (OSS) as an UNE. Such requirements are implemented by ILECs through different Commission proceedings that are ILEC-specific. Accordingly, the Commission, *sua sponte*, clarifies the ILECs' customer migration obligations in adopted Rule 4901:1-7-22(B).

In regard to One Communications' proposal that the customer service records include information on all services, and not just those pertaining to tariffed services, the Commission finds that it will only require the inclusion of information on services it does regulate. Consistent with this determination, the Commission will amend proposed Rule 4901:1-7-22(A)(1) accordingly.

With respect to the clarification sought by Verizon specific to proposed Rule 4901:1-7-22(A)(2), the Commission finds that Verizon misunderstands the requirements of the proposed rule. The Commission notes that, as proposed, the rule would address completion of all tasks associated with the service order, and not just "physical work." Accordingly, we find that no change is necessary for proposed Rule 4901:1-7-22(A)(2).

2. <u>Proposed Rule 4901:1-7-22(B)</u>

Staff proposed the following language relative to the proposed rule:

> All telephone companies shall use the industry developed formats, or a mutually agreed equivalent, for the exchange of customer account information between telephone companies.

(a) <u>Comments</u>

OTA submits that, in addition to acknowledging the need to use industry developed formats for account information exchange, the proposed rule should also recognize the priority of industry-standard timelines specific to the industry-specific formats. As an example, OTA points to the standard intervals for local number portability established by the FCC and the North American Numbering Council (NANC). Verizon agrees with OTA's recommendation regarding the need for incorporating industry standard timelines, including those of NANC into the rule (Verizon Reply Comments at 8). Additionally, Verizon believes that in order to avoid confusion regarding the intent of the proposed rule, it should be clarified to reflect that the referred to industry developed formats are limited to those related to ordering, pre-ordering, and billing (Verizon Initial Comments at 12).

(b) <u>Decision</u>

In regard to OTA's request to amend the proposed rule in order to recognize the priority of industry-standard timelines specific to industry developed formats for the exchange of account information, the Commission finds such request to be reasonable and should be granted. Therefore, the proposed rule is amended accordingly. With respect to Verizon's request for clarification that the referred to industry developed formats are limited to those currently existing formats related to ordering, pre-ordering, and billing, the Commission clarifies that it does not intend for the adopted rule to be that restrictive in nature but, rather, sought to provide flexibility for future development. Therefore, the proposed rule, now adopted as Rule 49801:1-7-22(c), is revised in the attached appendix to reflect this flexibility.

3. Proposed Rule 4901:1-7-22(C)

Staff proposed the following language with respect to this rule:

> Telephone companies responding to a request for customer service records shall provide such information to the requesting telephone company within two business days.

(a) Comments

Verizon asserts that the timeline to respond to a customer service request should only be triggered upon the submission of a valid and correct customer service request. Verizon submits that to the extent that an inaccurate or incomplete customer service request is submitted, there should be no obligation to provide the requested information. Additionally, Verizon points out that the proposed rule does not establish a timeline for responding to local service requests. Verizon believes that the timeline to respond to local service requests should be in accordance with the industry standards established by the NANC (Verizon Initial Comments at 12, 13).

(b) Decision

The Commission determines that the issue of what constitutes a "valid and correct" customer service request is best addressed in the context of a negotiated agreement between the individual carriers. Therefore, it is not necessary to revise the proposed rule with respect to this issue. With respect to the issue of establishing a timeline for responding to local service requests, the Commission finds that, similar to our discussion regarding proposed Rule 4901:1-7-22(B), *supra*, industry-standard timelines should be utilized for the purpose of responding to local service requests. Adopted Rule 4901:1-7-22 reflects this decision.

4. Proposed Rule 4901:1-7-22(D)

Staff proposed the following language with respect to the proposed rule:

> No telephone company, having obtained facilities, resources or information for the purpose of serving a specific customer, shall, upon the receipt of a request to migrate that customer, continue to hold, or fail to release said facilities, resources or information solely in order to prevent or delay the migration of that customer. In the event of a dispute, the telephone company retaining the facilities, resources or information carries the burden of proof to demonstrate a valid reason for retaining the facilities, resources or information in question.

(a) Comments

One Communications suggests that the proposed rule be strengthened by establishing a blanket prohibition on the retention of facilities, resources, or information, in situations of a customer migration. Specifically, One Communications posits that there would never be a valid reason for a company to act in such a manner. One Communications proposes alternative language which would prohibit the refusal to release facilities, notwithstanding an unpaid customer balance or the failure to provide a customer's authorization. In order to address the concern identified by One Communications, Verizon recommends that the Commission adopt the guidelines developed by the telecommunications industry and the government in New York (Verizon Reply Comments at 6).

(b) Decision

With respect to One Communications' proposed language, the Commission finds that it is important to balance the subscribers' need for the prompt transition of service with the need to have measures in place for the protection against slamming. Based on this balancing exercise, the Commission concludes that One Communications' proposed language should be denied. In reaching this determination, the Commission notes that One Communications' proposed language is inconsistent with the 47 C.F.R. 64.1120 which addresses the requirement for verification of orders for telecommunications services.

5. Proposed Rule 4901:1-7-22(E)

Staff proposed the following language with respect to the proposed rule:

> No telephone company shall solicit a competing telephone company's customer while the competing telephone company is in the process of obtaining from the telephone company the facilities, resources or information necessary to serve that same customer.

(a) Comments

Cincinnati Bell points out that there may be circumstances whereby certain exceptions to proposed Rule 4901:1-7-22(E) are appropriate. For example, Cincinnati Bell opines that the solicitation prohibition should not apply to general marketing campaigns whereby those specific customers were not targeted because they had pending orders for service from a competing carrier. The second identified exception to the proposed rule is in the situation in which the customer initiates contact with the current carrier (Cincinnati Bell Initial Comments at 6). In support of its position, Cincinnati Bell explains that in both of the identified scenarios, the current carrier has not acted based upon knowledge that there was a pending order or upon any other information that it received from the competing carrier (Cincinnati Bell Initial Comments at 6, 7).

In addition to the concerns identified by Cincinnati Bell, OTA points out that the proposed rule could result in the prohibition of the marketing of the customer by an unrelated third carrier during the migration period (OTA Initial Comments at 9). Embarq avers that the proposed rule does a disservice to both competition and consumers inasmuch as it prohibits competitors from presenting attractive, targeted offers to subscribers when they are most receptive to reviewing such offers (Embarq Initial Comments at 8). Embarq asserts, that in light of the consumer protections provided pursuant to proposed Rule 4901:1-7-26, proposed Rule 4901:1-7-22(E) is unnecessary. OCC asserts that the proposed rule is reasonable and should not be revised to allow for the potential of win-back marketing (OCC Reply Comments at 7). Time Warner also asserts that the proposed rule should not be amended inasmuch as it is inappropriate for an ILEC to be advantaged as a result of its access to certain competitively sensitive information (Time Warner Initial Comments at 6).

(b) Decision

The Commission finds that it is unreasonable to impose an additional burden on any LEC to avoid including migrating customers in what is otherwise valid marketing efforts. The Commission also agrees that it is inappropriate to prevent a company from responding to customer inquiries, or to constrain the marketing of companies who are not a party to the relevant migration. At the same time, the Commission recognizes that it needs to provide some protection against the LEC that is losing the customer interfering with the corresponding migration. Therefore, adopted Rule 4901:1-7-22(F)[4] shall be revised accordingly. The Commission further notes that the process of changing a customer's preferred carrier selection is addressed by the minimum telephone service standards.

4 Adopted Rule 4901:1-7-22(F) was previously proposed Rule 4901:1-7-22(E).

6. Proposed Rule 4901:1-7-22(G)

Staff proposed the following language with respect to the proposed rule:

> Telephone companies shall submit customer service record requests to the customer's existing telephone company and not to the underlying network provider.

(a) Comments

OTA recommends that the proposed rule be consolidated into proposed Rule 4901:1-7-22(C) (OTA Initial Comments at 10). Verizon opines that there are scenarios in which the underlying network provider should be the designated recipient for customer service requests, such as when the existing telephone company has designated an agent to receive customer service records (Verizon Initial Comments at 13).

(b) Decision

Verizon's proposed revision is rejected. In reaching this decision, the Commission notes that the intent of this rule is to address the issue of customer migration between two companies regardless of the manner in which the service is provisioned. The issue raised by Verizon should be addressed in the interconnection agreement between the two telephone companies and should not interfere with the obligation of a telephone company releasing its customer's service record.

R. Proposed Rule 4901:1-7-23 Rights-of-way, Poles, Ducts, and Conduit.

1. Proposed Rule 4901:1-7-23(A)

Staff proposed the following language with respect to the proposed rule:

> (A) Authorization
>
> (3) Telephone companies are prohibited from entering into exclusive use agreements of private building riser space, conduit, and/or closet space.

(a) Comments

With respect to proposed Rule 4901:1-7-23(A)(3), AT&T Ohio asserts that the Commission is unfairly limiting the application of its current policy to LECs, rather than extending the application of the policy to both LECs and building owners. In support of its position, AT&T Ohio references the Commission's September 29, 1994, decision in Case No. 86-927-TP-COI, *In the Matter of the Commission's Investigation into the Detariffing of the*

Installation and Maintenance of Simple and Complex Inside Wiring, p. 21 and the Commission' February 20, 1997, Local Service Guidelines, Case No. 95-845-TP-COI, *In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*. Time Warner also asserts that the proposed rule should reflect a broader policy regarding exclusive arrangements between building owners and telephone companies, and should not be limited to LECs (Time Warner Reply Comments at 7).

(b) Decision

In response to the comments filed by AT&T Ohio and Time Warner, the Commission concludes that there is no basis to amend the proposed rule. In reaching this determination, the Commission notes that telephone companies, not the building owners, are subject to the Commission's jurisdiction and the enforcement of the Commission's rules. Therefore, although our jurisdiction does not extend to the building owner, the rule does prohibit entities over which we have jurisdiction from entering into such agreements.

2. Proposed Rule 4901:1-7-23(B)

Staff proposed the following language with respect to the proposed rule:

> Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and right-of-way shall be established through interconnection arrangements or tariffs. Such access shall be established pursuant to 47 C.F.R 1.1401 to 1.1418, as effective on November 1, 2006.

(a) Comments

OCTA believes that pole attachments and conduit occupancy require regulatory oversight because they have a high level of public interest. OCTA opines that pole attachments and conduit occupancy rates should not be treated as Tier 2 services pursuant to the Commission's retail rules (Chapter 4901:1-6) but, rather, should be considered as either Tier 1 services, pursuant to the Commission's retail rules, or addressed, consistent with OCTA's proposed revisions, pursuant to proposed Rule 4901:1-7-23, (OCTA Initial Comments at 12, 13). Specifically, OCTA believes that the Commission must clarify that it will be guided by the FCC's pole attachment rate formula and the FCC's policy on overlashing. Further, OCTA asserts that the Commission must clearly indicate that conduit occupancy cannot be denied merely because the ILEC wants to reserve capacity for its own future use, and proposed specific language to reflect its position (*Id.* at 13, 14).

Cincinnati Bell opposes OCTA's recommendation that pole attachments and conduit occupancy be considered as Tier 1 services. In support of its position, Cincinnati Bell asserts that such treatment would subject pole and conduit rates to an unsuitable form of regulation due to the fact that these rates were established using the FCC formulas and have no relationship to the type of retail services that are under Tier 1 regulation. Therefore, Cincinnati Bell submits that any changes to the applicable rates should occur pursuant to the FCC formulas, and not pursuant to Tier 1 restrictions (Cincinnati Bell Reply Comments at 7).

Additionally, AT&T Ohio believes that the second sentence of the proposed rule should be deleted because it is ambiguous. Specifically, AT&T Ohio believes that the reference to C.F.R. 1.1401 to 1.1418 applies more to complaint filing procedures and not to substantive policies governing the rates, terms, and conditions for attachments (AT&T Ohio Initial Comments at 18).

Specific to the issues of capacity reservation and overlashing, AT&T Ohio asserts that OCTA's proposed language is unnecessary inasmuch as they are a repetition of the FCC's rules. To the extent that there are certain inadequacies in the FCC's rules (e.g., relative to overlashing), AT&T Ohio believes that the Commission should leave itself free to take another look at the issue at some point in the future (AT&T Ohio Reply Comments at 13, 14).

Verizon contends that the language additions proposed by OCTA should not be adopted in light of the fact that they pertain to specific issues that should be addressed in individual agreements between the ILEC and any carrier requesting access to rights-of-way, poles, ducts, and conduit (Verizon Reply Comments at 5).

OTA posits that, although proposed Rule 4901:1-7-23(B) provides for the establishment of tariffs, it fails to reference the Commission's ATA procedure. OTA recommends that such a reference should be included in the proposed rule (OTA Initial Comments at 10).

(b) Decision

The issue of what comprises a Tier 1 or Tier 2 retail service was previously addressed in Case No. 06-1345-TP-ORD, *In the Matter of the Review of Chapter 4901:1-6, Ohio Administrative Code*. Access to rights-of-way, poles, ducts, and conduits are not retail services and, accordingly, do not belong to either Tier 1 or Tier 2 classifications. Rather, these services are offered to other utilities and are subject to pricing standards that are set pursuant to Section 224 of the 1996 Act and the FCC's policies, and not the retail pricing parameters for Tiers 1 and 2.

In regard to the additional language proposed by OCTA, the Commission agrees with AT&T Ohio and Verizon that the additional language would be redundant inasmuch as it is already in the FCC's rules. With respect to the issue of overlashing, the Commission concludes that this issue should be evaluated on an individual case basis, consistent with the Commission's authority to regulate the rates, terms, and conditions for access to poles and conduits. The proposed rule is revised to reflect such conclusion.

With respect to OTA's proposal to include a reference to the Commission's ATA procedure, the Commission notes that an ATA process is established for tariff revisions that do not reflect an increase in the rate. As a result, the ATA procedure would not be appropriate in those cases in which the LEC intends to increase the rate. Therefore, the proposed rule shall be amended to reflect that any change in the public utility's tariffed rates, terms, and conditions for access to poles, ducts, conduits, or rights-of-way shall be filed as a UNC proceeding. Finally, the Commission agrees that a portion of the CFR references pertain to complaint procedures, filings, and hearing, and not to substantive policies governing the rates, terms, and conditions for attachments. Therefore, the proposed rule has been revised to reflect the appropriate citations.

S. Proposed Rule 4901:1-7-24 Local Number Portability

1. Proposed Rule 4901:1-7-24(A)

Staff proposed the following language with respect to the proposed rule:

> Telephone companies do not have a proprietary interest in the customer's telephone number. End user customers must have the ability to retain the same telephone number as they change from one telephone company to another.

(a) Comments

AT&T Ohio believes that the FCC rules only prohibit a proprietary interest in telephone numbers in the context of a number-porting situation. Notwithstanding number porting, AT&T Ohio asserts that it has the right, pursuant to tariff, to change the telephone number and/or central office code whenever necessary (AT&T Ohio Initial Comments at 19, 20). Additionally, AT&T Ohio, Embarq, and OTA all believe that telephone companies do have a proprietary interest in telephone numbers. Therefore, they believe that the proposed rule should be clarified to reflect that subscribers do not have the right to retain the same telephone number without limitation (i.e., location number portability) (AT&T Ohio Initial Comments at 20; Embarq Initial Comments at 6; OTA Initial Comments at 10).

(b) Decision

The Commission clarifies that the proposed rule was only intended to restrict a telephone company's proprietary interest as it refers to number porting. There is no intent to provide subscribers with a proprietary interest in their telephone numbers or prohibit tariff language to that effect. Further, in order to track the FCC's requirements and definition for LNP, the phrase "at the same location" will be added to the last sentence of the proposed rule. By stating "at the same location" , the Commission intends for number portability to allow a customer to retain a telephone number across the same telephone exchange consistent with the FCC's usage of this phrase.

T. Proposed Rule 4901:1-7-26 Competition Safeguards

1. Proposed Rule 4901:1-7-26(A)

Staff proposed the following language with respect to the proposed rule:

(A) Code of conduct

(1) Disclosure of information.

(a) Definitions

(i) For the purpose of this rule, "customer network proprietary information" (CPNI) shall be defined in accordance with 47 U.S.C. 222(h)(1), as effective on November 1, 2006.

(ii) For the purpose of this rule, "subscriber list information" shall be defined in accordance with 47 U.S.C. 222(h)(3) , as effective on November 1, 2006.

(b) Customer proprietary network information (CPNI)

(i) The use of CPNI by any telephone company must comply with 47 U.S.C. 222, and 47 C.F.R. 64.2001 to 64.2009, as effective on November 1, 2006.

(ii) No local exchange carrier (LEC) shall access or use the CPNI held by either an interconnecting LEC or a LEC reselling its services for the purpose of marketing its services to either the interconnecting LEC's customers or reselling LEC's customers.

(c) No telephone company shall disclose any competitively advantageous information not defined as CPNI under 47 U.S.C. 222(h)(1) , as effective on November 1, 2006, to its affiliates without contemporaneously and in the same manner making it available to nonaffiliated competitors.

(d) To the extent a telephone company makes subscriber list information available to affiliated competitors within its service territory for purposes other than the publishing of directories, it must also do so on a nondiscriminatory basis with all unaffiliated competitors certified to provide service in its service territory.

(i) This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.

(ii) This provision does not apply to information subject to a customer request to either release or withhold information.

(2) Competitor information

Telephone companies shall treat as confidential all information obtained from a competitor, both affiliated and nonaffiliated, and shall not release such information unless a competitor provides authorization to do so.

(3) Retail/wholesale transfer of information

All telephone companies shall treat as confidential all information obtained by their wholesale operations

[sic] other telephone companies and shall not share any information between its retail and wholesale functions.

(4) Records

All telephone companies shall maintain information to enable the commission to determine whether they have satisfied paragraph (A) of this rule.

(a) Comments

Cincinnati Bell, OTA, One Communications, and Embarq all assert that the Commission does not need to establish CPNI rules due to the belief that the federal rule is adequate and that there is no additional value in repeating restrictions that are already in place pursuant to federal law (Cincinnati Bell Initial Comments at 7; OTA Initial Comments at 11; One Communications Initial Comments at 9; Embarq Initial Comments at 6). AT&T Ohio posits that the proposed rule is actually broader than the applicable federal statute (AT&T Ohio Initial Comments at 21-22). OTA asserts that it is not necessary for the Commission to prescribe the terms and conditions by which information may be shared. OTA points out that these issues have been addressed in numerous orders involving the larger carriers' operations support systems and in interconnection agreements with most CLECs (OTA Initial Comments at 11).

Cincinnati Bell asserts that there are at least three specific provisions in the proposed rule that go beyond the restrictions required by federal law and would interfere with the ability of LECs to conduct business. For example, Cincinnati Bell believes that proposed Rule 4901:1-7-26(A)(1)(c) would prohibit telephone companies from sharing competitively advantageous information that is not CPNI with their affiliates if they do not share the same information with their competitors. Additionally, Cincinnati Bell contends that part (A)(2) would require confidential treatment of everything learned from a competitor, whether or not the information is truly confidential. Cincinnati Bell asserts that, as a result of the proposed rule, everything that is not CPNI will be subject to stricter limitations on its use than would be permitted for CPNI itself (*Id.* at 8).

Time Warner supports the proposed rule based upon the belief that it ensures that competition remains robust in the telecommunications industry and that customers will be gained through independent, stand-alone marketing efforts rather than through the use of competitive intelligence obtained through wholesale activity (Time Warner Reply Comments at 7).

AT&T Ohio, Verizon, and One Communications all request that the Commission define "competitively advantageous information not defined as CPNI" as utilized in proposed Rule 4901:1-7-26(A)(1)(c) (AT&T Ohio Initial Comments at 20, 21; One Communications Initial Comments at 9; Verizon Initial Comments at 13-17). With respect to proposed Rule 4901:1-7-26(A)(2), AT&T Ohio and One Communications both state that the proposed rule is overly broad because the phrase "all information obtained from a competitor ..." is not defined (AT&T Ohio Initial Comments at 21, 22; One Communications Initial Comments at 10, 11). AT&T Ohio believes that all telephone companies should be able to use and/or release information for the purpose of providing the underlying telecommunications service to a competitor (AT&T Ohio Initial Comments at 21, 22).

AT&T Ohio and One Communications both express concern regarding the prohibition in proposed Rule 4901:1-7-26(A)(3) regarding the sharing of confidential information between a telephone company's retail and wholesale functions. In particular, the commentors call attention to the fact that the "retail" and "wholesale" functions are not defined and that some aspects of the business are involved in providing both types of service (*Id.* at 22; One Communications Initial Comments at 11). AT&T Ohio points out that such consolidation of retail and wholesale functions has occurred for efficiency purposes, while at the same time ensuring that there are proper safeguards in place to protect against retail organizations using wholesale data for the purpose of competitively advantaging retail operations or marketing retail services to wholesale end-user customers (AT&T Ohio Initial Comments at 22).

OTA contends that the requirement that carriers retain information "to enable the Commission to determine whether they have satisfied ..." the rule is too vague to enforce. In particular, OTA asserts that is difficult for a carrier to predict the specific information that will enable the Commission to enforce its rules. Rather, OTA believes that the Commission should require that carriers maintain records consistent with the FCC's requirements (OTA Initial Comments at 11, 12).

(b) Decision

First, the Commission agrees that the phrase "competitively advantageous information not defined as CPNI" is not defined in proposed Rule 4901:1-7-26(A)(1)(c) and goes beyond the restrictions required by federal law. As a result, the proposed rule will be revised in order to delete the provisions of proposed Rule 4901:1-7-26(A)(1)(c).

Second, in regard to proposed Rule 4901:1-7-26(A)(2), the Commission agrees with the concerns raised as to requiring the confidential treatment of "all information obtained from a competitor," whether or not the information is confidential. We determine that Section 222(a) of the 1996 Act adequately addresses the intent of this part of the proposed rule. Additionally, the Commission notes that individual interconnection agreements have terms and conditions that control the treatment of CPNI received from another provider. Therefore, this requirement is removed from the adopted rules.

Third, the Commission determines that proposed Rule 4901:1-7-26(A)(3) is overbroad and that the true concern of the rule is already addressed in proposed Rule 4901:1-7-26(A)(1)(b)(ii). Therefore, proposed Rule 4901:1-7-26(A)(3) has been deleted.

Fourth, in regard to proposed Rule 4901:1-7-26(A)(4), the Commission agrees that the proposed rule is too vague to comply with or enforce. For the purpose of clarification, the phrase "consistent with FCC requirements" will be added to the proposed rule.

U. Proposed Rule 4901:1-7-27 Reporting Requirements

Staff proposed the following language with respect to the proposed rule:

> (A) All local exchange carriers (LECs) that report market information to the federal communications commission must submit market information reports on a semi-annual basis in the format required by the Ohio commission similar in form and content to FCC form 477.
>
> (B) This market information must be reported at the incumbent local exchange carrier service area level rather than at the state level on semi-annual basis on March first and September first. Each reporting LEC must provide the information electronically in the exact format made available on the commission's web site. The instructions reflected on the commission's web site, as may be modified from time-to-time, must be followed strictly, with no alterations.

1. Comments

AT&T Ohio opines that the proposed rule would eliminate the reports currently required to be filed by CLECs pursuant to Case No. 99-1170-TP-DTA (99-1170), *In the Matter of the Commission's Collection of Data with Respect to the Provision of Service by New Entrant Carriers*. AT&T Ohio submits that requiring less information from LECs will result in less information being available for such things as the analysis of competition under Section 4927.03, Revised Code, and other Commission responsibilities. AT&T Ohio asserts that there is a shortage of information provided to the Commission by CLECs and that this problem will only be exacerbated by the fact that pursuant to FCC Form 477, information is not reported on an exchange-by-exchange basis and the fact that the FCC allows companies to avail themselves of confidential treatment of their Form 477 filings. Therefore, AT&T Ohio avers that the Form 477 filings will not facilitate the analysis of exchange-specific data as contemplated in the Commission's BLES alternative regulation rules (AT&T Ohio Initial Comments at 23).

Cincinnati Bell avers that the proposed rule is open-ended and fails to specify what information the reports must contain. Cincinnati Bell also questions whether the proposed rule requires the filing of the same reports that are already filed with the FCC or whether it requires the creation of new market reports based on different jurisdictional areas. The company points out that if a different market report is being requested, it will result in either the creation of a new reporting process that does not currently exist or the sorting of data in a fashion in which it is not currently gathered or retained. Cincinnati Bell discourages the Commission from creating new record keeping requirements that serve no business purpose and would impose costs on carriers simply to create and maintain a reporting process (Cincinnati Bell Initial Comments at 10).

OCTA states that, while it does not have an objection to submitting market information to staff as reported to the FCC on Form 477, the information is maintained on a statewide basis, and not at the ILEC service area level. OCTA also represents that, in light of the fact that certain information on Form 477 may be beyond the state's jurisdiction, language should be added either allowing for the deletion of nonjurisdictional information or its submission under seal (OCTA Initial Comments at 14, 15).

OTA, Embarq, Time Warner, and Verizon all assert that the proposed rule requires the redundant filing of the same information at both the federal and state level (OTA Initial Comments at 12; Embarq Initial Comments at 7; Time Warner Reply Comments at 8; Verizon Initial Comments at 18, 19). OTA recommends that the proposed rule be rejected inasmuch as this redundancy is not in the public interest (OTA Initial Comments at 12). Time Warner and Verizon both advocate that the rule be amended to allow CLECs to file their information in the same format as provided to the FCC pursuant to Form 477, rather than requiring CLECs to break out market information on an exchange area basis (Time Warner Initial Comments at 3; Verizon Initial Comments at 18, 19). In support of its position, Time Warner asserts that the usefulness of market data reported on an exchange area basis has been greatly diminished by the presence of "nonexchange" traffic substitutes, such as VoIP and other packet-switched-based services (Time Warner Initial Comments at 3).

2. Decision

The Commission recognizes the difficulties that CLECs will have in reporting market data at the ILEC service area level. Therefore, proposed Rule 4901:1-7-27 is amended to limit the reporting level for all LECs to a statewide basis as reported to the FCC on Form 477. The substance, format, and timing of the submission shall be the same as the Form 477 filing. The Commission notes that the recently adopted retail rules eliminated the requirement of filing company reports pursuant to 99-1170.

V. Proposed Rule 4901:1-7-29 Local Exchange Carrier Default

Staff proposed the following language with respect to the proposed rule:

(A) In the event a local exchange carrier (LEC) intends to terminate another LEC's access to its network for non-payment or any other material default, as defined by an agreement between the LECs, and in the event such termination of service would effectively result in the disconnection of the defaulting LEC's retail end user customers from the local telecommunications network without the notice required under rule 4901:1-6-16 of the Administrative Code, the aggrieved LEC shall be required to notify the commission at least fourteen calendar days in advance of the date it intends to terminate access. Such notice shall be made by electronic mail, facsimile, overnight mail, or hand delivery to the defaulting LEC and to the director of the service monitoring and enforcement department, the chief of the telecommunications section of the utilities department, and the chief of the telecommunications section of the legal department.

(B) If it is determined that further investigation is warranted or that immediate termination may not be in the public interest, the commission or an attorney examiner may direct the company to suspend the termination until further investigation or until the defaulting LEC's customer can be properly noticed. 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.

1. Comments

OTA, Embarq, and Verizon each assert that proposed Rule 4901:1-7-29(B) results in the potential for Commission interference with contractual termination procedures previously approved by the Commission. The commentors opine that previously approved contractual remedies incorporated in existing interconnection agreements will be placed in jeopardy if, pursuant to the proposed rule, the Commission determines that immediate termination may not be in the public interest. Further, the companies identify the fact that, as a direct consequence of this action, it is likely that ILECs will be required to continue providing service without compensation for some period of time (OTA Initial Comments at 12, 13; Embarq Initial Comments at 7; Verizon Reply Comments at 9).

AT&T Ohio avers that if termination is suspended pursuant to proposed Rule 4901:1-7-29(B), the suspension period should not be open-ended, but should include a time limit of 14 calendar days in order for customers to be notified by the defaulting carrier if a prior notice had not be provided (AT&T Ohio Initial Comments at 23, 24). To the extent that the Commission conceptually agrees with the proposed rule, Verizon recommends that, rather than allowing for the "suspension" of the termination, the language should be revised to allow for the ability to "stay" the termination for up to 15 days (Verizon Initial Comments at 19).

OCC recommends that, to the extent that the defaulting carrier serves residential customers, the carrier should provide the appropriate notice to both the Commission and OCC. In the event that the Commission suspends the applicable termination, OCC proposes that customers receive at least 60-days notice of the pending event (OCC Initial Comments at 10). AT&T Ohio objects to OCC's proposed 60-day notice and contends that it is unclear as to the type of notice sought by OCC. Further, AT&T Ohio notes that confidential customer information is protected by the pertinent interconnection agreements and cannot be provided to OCC (AT&T Ohio Reply Comments). Time Warner believes that the Commission should adopt the proposed rule inasmuch as it will provide essential protection against the tactics of ILECs in billing disputes (Time Warner Reply Comments at 8).

2. Decision

Based on OCC's comments, the Commission concludes that, following staff's further investigation and determination that the disconnection of the defaulting LECs' customers is imminent, staff will apprise OCC of the current situation if residential customers are affected. Further the Commission finds it appropriate that, if it is determined that further investigation is warranted or that immediate termination may not be in the public interest, the Commission or an attorney examiner may direct the company to stay the termination for further investigation. However, we disagree with setting a 15-day time frame for all ordered stays inasmuch as each situation may differ and, therefore, it is more appropriate for each situation to be considered in a case-by-case basis. As a result, proposed Rule 4901:1-7-29 is revised as reflected in the attached appendix.

IV. CONCLUSION

Upon consideration of the record as a whole, including the staff proposal and all comments and reply comments submitted in response to it, the Commission enacts the rules attached as the appendix to this opinion and order for the reasons discussed above. The adopted rules are not intended to replace any of the Commission's existing rules in other chapters of the O.A.C. but, rather, should be read in conjunction with such existing requirements.

V. ORDER

It is, therefore,

ORDERED, That Chapter 4901:1-7, as set forth in the appendix to this opinion and order, is hereby adopted. It is, further,

ORDERED, That copies of Chapter 4901:1-7, O.A.C., as set forth in the appendix to this opinion and order, be filed with the Joint Committee on Agency Rule Review, the Legislative Service Commission, and the Secretary of State in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That "edge-out" companies and CLECs should file the requisite applications to reduce intrastate switched access rates consistent with this opinion and order. It is, further,

ORDERED, That to the extent not addressed in this opinion and order or the attached appendices, all other arguments raised are denied. It is, further,

ORDERED, That a copy of this opinion and order be served upon all telephone companies, parties, and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

JSA;geb

Entered in the Journal
AUG 2 2 2007

Reneé J. Jenkins
Secretary

4901:1-7-01 **Definitions.**

As used within this chapter, these terms denote the following:

(A) "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of these rules, the term "own" means to own an equity interest (or the equivalent thereof) of more than ten per cent.

(B) "Commercial mobile radio service" (CMRS) is specifically limited to include mobile telephone, mobile cellular telephone, paging, personal communication services, and specialized mobile radio service providers when serving as a common carrier in Ohio. Fixed wireless service is not considered as CMRS.

(C) "Commission" means the public utilities commission of Ohio.

(D) "Competitive local exchange carrier" (CLEC) means, with respect to a service area, any facilities-based and nonfacilities-based, local exchange carrier that was not an incumbent local exchange carrier on the date of the enactment of the Telecommunications Act of 1996 (1996 Act), or is not an entity that, on or after such date of enactment, became a successor or assign of an incumbent local exchange carrier.

(E) "Customer" means any person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company.

(F) "Exchange" is a geographic service area established by an incumbent local exchange carrier and approved by the commission, which usually embraces a city, town, or village and a designated surrounding or adjacent area. There are currently seven hundred forty-eight exchanges in the state of Ohio.

(G) "Facilities-based CLEC" means, with respect to a service area, any local exchange carrier that uses facilities it owns, operates, manages, or controls to provide basic local exchange services to the public on a common carrier basis; and that was not an incumbent local exchange carrier on the date of the enactment of the 1996 Act. Such carrier may partially or totally own, operate, manage, or control such facilities. Carriers not included in such classification are carriers providing service(s) solely by resale of the incumbent local exchange carrier's local exchange services.

(H) "Incumbent local exchange carrier" (ILEC) means any facilities-based local exchange carrier that: (1) on the date of enactment of the 1996 Act, provided basic local exchange service with respect to an area; and (2) (a) on such date of enactment, was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. 69.601(b); or (b) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (2)(a).

(I) "InterLATA service" means telecommunications between a point located in a local access and transport area and a point outside such area.

(J) "Local access and transport area" (LATA) means, as designated by the "Modification of Final Judgment," United States v. Western Electric Co., (C.A. No. 82-1092), 552 F. Supp. 131 (1982), an area in which a local exchange carrier is permitted to provide service. It contains one or more local exchange areas.

(K) "Large ILEC" means any ILEC serving fifty thousand or more access lines within the state of Ohio.

(L) "Local exchange carrier" (LEC) means any facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to the public on a common carrier basis. Such term does not include an entity insofar as such entity is engaged in the provision of a CMRS under 47 U.S.C. 332(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, except to the extent that the federal communications commission finds that such service should be included in the definition of such term.

(M) "Local presubscribed interexchange carrier" is a designation used to identify an intrastate intraLATA presubscribed interexchange carrier that provides intrastate intraLATA presubscribed interexchange service to customers.

(N) "Network element" means the facility or equipment used in the provision of a telecommunication service. Such term also includes, but is not limited to, features, functions, and capabilities that are provided by means of such facility or equipment, including, but not limited to, subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

(O) "Number portability" means the ability of customers of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when moving from one telephone company to another.

(P) "Rural carrier" means a LEC operating entity as defined in 47 U.S.C. 251(f)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(Q) "Rural telephone company" means a LEC operating entity as defined in 47 U.S.C. 153(37), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(R) "Small ILEC" means any ILEC serving less than fifty thousand access lines within the state of Ohio.

(S) "Telephone company" for purposes of this chapter, shall have the same meaning as defined in division (A)(2) of section 4905.03 of the Revised Code and includes the definition of "telecommunications carrier" incorporated in 47 U.S.C. 153(44), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

4901:1-7-02 **General applicability.**

(A) Each citation contained within this chapter that is made to either a section of the United States code or to a regulation in the code of federal regulations is intended, and shall serve, to incorporate by reference the particular version of the cited matter as effective on August 22, 2007.

(B) The obligations found in rules 4901:1-7-03 to 4901:1-7-29 of the Administrative Code, shall apply to all telephone companies pursuant to 47 U.S.C. 251 and 252, as effective in paragraph (A) of this rule.

(C) The commission may, upon its own motion or for good cause shown, waive any requirement, standard, or rule set forth in this chapter.

(D) Any telephone company seeking a waiver(s) of rules contained in this chapter shall specify the period of time for which it seeks such a waiver(s), and a detailed justification in the form of a motion filed in accordance with rule 4901-1-12 of the Administrative Code.

(E) All waiver requests must be approved by the commission and will toll any automatic approval time frames set forth in Rule 4901:1-6-08 of the Administrative Code.

4901:1-7-03 **Toll presubscription.**

(A) All local exchange carriers (LEC) shall charge intrastate intraLATA toll providers or customers no more than five dollars and fifty cents for a manual, local presubscribed interexchange carrier (LPIC) change or no more than one dollar and twenty-five cents for an electronic LPIC change, except when a LEC establishes a company-specific, cost-based, intrastate LPIC rate, as discussed in paragraph (G) of this rule.

Whenever a LEC charges an intrastate intraLATA toll provider for changing a customer's LPIC, such LEC may not charge the customer making the request for the same LPIC change.

An intrastate intraLATA toll provider who is charged by the LEC providing presubscription for changing a customer's LPI, may pass through to that customer no more than what it has been charged by such LEC.

(B) Charges other than the permitted LPIC change charge are explicitly prohibited from applying to any LPIC change.

(C) When a customer switches both the customer's interLATA presubscribed interexchange carrier (PIC) and LPIC at the same time, the LEC providing presubscription shall waive one-half of the applicable LPIC change charge without regard to whether the change was performed through manual or electronic means. This requirement to waive one-half of the applicable LPIC change charge does not apply when company-specific, cost-supported charges that account for the efficiencies of changing the customer's interLATA PIC and LPIC at the same time have been approved pursuant to paragraph (G) of this rule.

(D) When an intrastate intraLATA toll provider electronically submits to a LEC a request to change a customer's LPIC, the LEC shall treat the LPIC change as an electronic LPIC change for customer billing purposes, regardless of any manual process that may be required or involved in carrying out the change.

(E) Paragraphs (A) to (D) of this rule also apply when the subscriber explicitly chooses no intrastate intraLATA toll carrier (NoLPIC).

(F) A new customer shall be permitted to make an initial LPIC selection, which may include choosing NoLPIC, free of charge at the time the customer initiates local service. If the customer is unable to make a selection at the time of initiation of local service, the LEC offering presubscription shall read a random listing of all available toll providers to aid in the customer's selection. If, after being read the list of all available toll providers, the customer still does not make an LPIC selection, the LEC shall inform the customer that unless a selection is made by the customer at the time local service is initiated, the LEC will, as a default, place the customer in a NoLPIC status.

The LEC shall further inform the customer that until such time as the customer informs the LEC of the customer's LPIC selection, the customer will not have an intrastate intraLATA toll provider and, as a result, will be required to dial a carrier access code to route an intrastate intraLATA toll call to the carrier of the customer's choice or make other arrangements. A customer making an LPIC selection after the time of local service initiation may be assessed an LPIC change charge subject to paragraphs (A) to (D) of this rule.

(G) A LEC demonstrating through a submitted cost study that the LPIC rates identified in paragraph (A) of this rule do not recover the costs incurred shall be permitted to file company-specific rates through the filing of a UNC case.

(H) Any LEC that has previously relied upon cost support to establish its tariffed LPIC change charge when such charge is below the safe harbor rates set forth in this rule and in effect as of the effective date of this rule may not increase its LPIC change charge without first providing cost support justifying the increase.

4901:1-7-04 **Rural telephone company exemption.**

(A) A rural telephone company is subject to the provisional rural telephone exemption referenced in 47 U.S.C. 251(f)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, until such time as the rural telephone company receives a bona fide request for interconnection, services, or network elements, and the commission terminates the rural telephone company exemption pursuant to paragraph (D) of this rule. Should a nonrural telephone company sell, devise, assign, or otherwise transfer any portion of its facilities to a rural telephone company and such facilities are subject to an interconnection agreement(s) at the time of the transfer, such facilities shall remain subject to all obligations of the existing interconnection agreement(s). Such facilities will be subject to requirements referenced in 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, unless the commission rules otherwise.

(B) If a rural telephone company receives a bona fide request for interconnection, services, or network elements pursuant to 47 U.S.C. 251(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and it seeks to maintain a rural telephone company exemption, it shall file a UNC application with the commission within fifteen calendar days after receiving the request. The telephone company requesting interconnection shall file a response within fifteen calendar days after the rural telephone company's application for exemption. The burden of proof regarding the termination of a rural telephone company exemption pursuant to 47 U.S.C. 251(f)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, rests upon the telephone company requesting interconnection.

(C) The commission will review such application for exemption and the response to it on an individual case basis within one hundred twenty calendar days of the commission's notice of the bona fide request for interconnection.

(D) In reviewing the request for a rural telephone company exemption, the commission will review the application and responses and terminate the exemption should the commission find that the interconnection request is not unduly economically burdensome, is technically feasible, and is consistent with 47 U.S.C. 254, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(E) If the commission terminates the rural telephone company exemption, the timeframes established in rule 4901:1-7-07 of the Administrative Code begin anew with the issuance of the commission's order.

(F) If a rural telephone company does not seek to maintain an exemption, it shall follow the negotiation procedures set forth in rule 4901:1-7-07 of the Administrative Code. The commission shall evaluate applications for exemption by a rural telephone companies operating under Chapter 4901:1-4 of the Administrative Code on a case-by-case basis.

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

(A) If an incumbent local exchange carrier (ILEC), serving fewer than two per cent of the nation's subscriber lines installed in the aggregate, seeks a suspension or modification of any portion or portions of 47 U.S.C. 251(b) or (c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, as a rural carrier, it must file a UNC application with the commission within fifteen calendar days of receiving a bona fide request for interconnection.

(B) Such application must set forth with particularity the provision or provisions from which the rural carrier seeks suspension or modification. The commission shall act within one hundred eighty calendar days after receiving such application. The burden of proof regarding the suspension or modification rests upon the rural carrier.

(C) Pending such action, the commission may suspend enforcement of any requirement to which the application applies with respect to the requesting local exchange carrier. The commission may also consider such request in the context of filings pursuant to sections 4905.24, 4927.03, and/or 4927.04 of the Revised Code.

(D) In determining whether a suspension or modification is warranted, the commission will consider the following:

(1) Is the proposed suspension or modification necessary in order:

(a) To avoid a significant adverse economic impact on users of telecommunications services generally.

(b) To avoid imposing a requirement that is unduly economically burdensome.

(c) To avoid imposing a requirement that is technically infeasible.

(2) Is the proposed suspension or modification consistent with the public interest, convenience, and necessity.

4901:1-7-06 **Interconnection.**

The term interconnection as used in this chapter refers to the facilities and equipment physically linking two networks for the mutual exchange of traffic.

(A) General interconnection standards

(1) Each telephone company has the duty to interconnect directly or indirectly with the facilities and equipment of other telephone companies.

(2) Each telephone company shall make available interconnection to other telephone companies for the mutual exchange of traffic upon receipt of a request for interconnection, unless the commission orders a waiver of this requirement.

(3) All telephone companies shall have the duty to negotiate in good faith the terms and conditions of the interconnection agreement.

(4) Each incumbent local exchange carrier (ILEC) shall provide, for the facilities and equipment of any requesting telephone company, interconnection with the ILEC's network, for the transmission and routing of telephone exchange traffic, exchange access traffic, or both. Also, a telephone company requesting interconnection solely for the purpose of originating or terminating its interexchange traffic, not for the provision of telephone exchange service and exchange access to others, on an ILEC's network is not entitled to receive interconnection pursuant to 47 U.S.C. 251(c)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(5) Each ILEC shall provide interconnection to requesting telephone companies at any technically feasible point within its network, with quality at least equal to that provided by that ILEC to itself or to any subsidiary, affiliate, or any other party to which it provides interconnection pursuant to 47 C.F.R. 51.305, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. Any telephone company requesting interconnection to the existing network may do so via feature group D-type interconnection or via a mutually agreed upon interconnection arrangement. Interconnecting carriers may use one-way trunks or two-way trunks to interconnect for traffic transport and termination if it is technically feasible. Technically feasible methods of obtaining interconnection or access to unbundled network elements include, but are not limited to: a) collocation at the premises of the ILEC; and b) meet point interconnection arrangements, pursuant to rule 4901:1-7-11 of the Administrative Code, 47 C.F.R. 51.321 and 51.323, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. If a meet point arrangement is requested from the ILEC for the purpose of gaining access to unbundled network elements and/or for the purpose of exchanging traffic with the ILEC, each carrier is required to bear the network cost on its side of the point of interconnection in the meet point arrangement.

(6) Technically feasible points of interconnection within the ILEC's network shall include at a minimum:

(a) The line side of a local switch.

(b) The trunk side of a local switch.

(c) The trunk interconnection points for a tandem switch.

(d) Central office cross-connect points.

(e) Out-of-band signaling transfer points necessary to exchange traffic at these points and access call-related databases.

(f) The points of access to unbundled network elements as described in rule 4901:1-7-16 of the Administrative Code and 47 CFR 51.319, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(7) Interconnection rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a request for interconnection or through arbitration. Such arrangements shall be processed pursuant to rule 4901:1-7-07 of the Administrative Code.

(B) Basic requirements for request for interconnection

A request for interconnection shall be in writing and shall detail the specifics of the request. A request for interconnection shall include at a minimum, as applicable, the following:

(1) The requested meet point(s) or, in the alternative, the requested point(s) of interconnection (e.g., the end office, tandem, etc.).

(2) The requested reciprocal compensation arrangement for transport and termination of traffic.

(3) A description of any required unbundled network elements and the requested method of access to the operation support system associated with these unbundled network elements.

(4) A list of the requested telecommunications services to be offered for resale by the providing telephone company, and required operational support systems associated with the resale of these telecommunications services.

(5) If transit traffic functionality is required, the requested method(s) of providing that functionality at each requested point of interconnection.

(6) A list including names, phone numbers, e-mail, and areas of responsibility of the requesting carrier's contact persons for the negotiation process.

4901:1-7-07 **Establishment of interconnection agreements.**

(A) Processing requests for interconnection

(1) Any request for an interconnection arrangement pursuant to 47 U.S.C. 251 and 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, must be submitted via facsimile, overnight mail, e-mail, or hand-delivery to the appropriate personnel or division within the providing telephone company's organization in charge of negotiating interconnection arrangements between telephone companies. The requesting telephone company must also notify simultaneously the chief of the telecommunications division of the utilities department of the commission.

(2) At any point in time during the negotiation, any party to the negotiation may ask the commission to participate in the negotiation and to mediate any differences arising during the course of the negotiation, pursuant to rule 4901:1-7-08 of the Administrative Code.

(3) An incumbent local exchange carrier (ILEC) shall make available without unreasonable delay to any requesting telephone company any agreement in its entirety to which the ILEC is a party that is approved by the commission pursuant to 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, upon the same rates, terms, and conditions as those provided in the agreement and pursuant to 47 C.F.R. 51.809, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(4) Negotiated interconnection agreements shall be effective upon filing. The agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(B) Requests for the negotiation of an amendment to an existing interconnection arrangement

(1) A bona fide request (BFR) for interconnection may be used to request an interconnection arrangement, service, or unbundled network element that is subsequent to, unique, or in addition to an existing interconnection agreement and is to be added as an amendment to the underlying interconnection agreement.

(2) All amendments of an existing, approved interconnection agreement must be filed within ten calendar days of its execution and filed with the commission as a negotiated agreement (NAG).

(3) Interconnection agreement amendments shall be effective upon filing. The amendment to the agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(C) Process for the negotiation of subsequent interconnection agreements

(1) Parties shall negotiate the rates, terms, and conditions of subsequent interconnection arrangements in accordance with the terms of their existing interconnection agreement. Both parties to the existing interconnection agreement shall notify the chief of the telecommunications division of the utilities department of the commission when negotiations of a subsequent interconnection agreement have commenced.

(2) A party to an existing interconnection agreement may seek arbitration of a subsequent interconnection agreement pursuant to the arbitration rules set forth in rule 4901:1-7-09 of the Administrative Code.

(3) Subsequent interconnection agreements, whether adopted through negotiation or arbitration, shall be docketed as a new case within ten calendar days of signing.

(4) The subsequent interconnection agreement shall be effective upon filing. The subsequent interconnection agreement shall be approved pursuant to the ninety-day process set forth in paragraph (D)(2) of this rule.

(D) Interconnection agreement approval process

(1) Title 47 U.S.C. 252(e)(2)(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, limits the legal test to be applied to the approval of negotiated interconnection agreements to whether (a) the agreement (or portion thereof) is discriminatory against another telephone company, and (b) whether the implementation of such agreement is in the public interest.

(2) In light of the limited legal test set forth in 47 U.S.C. 252(e)(2)(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, all negotiated interconnection agreements, all executed adoptions of existing interconnection agreements under 47 U.S.C. 252(i), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, all negotiated subsequent interconnection agreements, and all amendments to such agreements shall be approved pursuant to the ninety-day process set forth in 47 U.S.C. 252(e)(4), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. All arbitrated agreements shall be approved pursuant to the thirty-day process set forth in 47 U.S.C. 252(e)(4), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(E) BFR fee

A providing telephone company is entitled to recover costs associated with the evaluation of a unique request for interconnection, examination of facilities for special arrangements, and technical and economic feasibility assessments. If the BFR fee exceeds five hundred dollars, the providing telephone company must allow, upon request by the requesting telephone company, payment of that fee over no more than twelve months whether or not the requesting telephone company proceeds with the request. The commission, through the arbitration process, will resolve disputes concerning the amount of the BFR fee. The BFR fee shall be subject to commission review and approval.

4901:1-7-08 **Negotiation and mediation of 47 U.S.C. 252 interconnection agreements.**

Interconnection agreements pursuant to 47 U.S.C. 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, shall be negotiated, mediated, and arbitrated under the following mediation and arbitration guidelines:

(A) Duty to negotiate

All telephone companies have the duty to negotiate in good faith the terms and conditions of their agreements. The commission will presume that a party who refuses to provide information about its costs or other relevant information upon request of the other party has not negotiated in good faith provided that, where appropriate, the other party agrees to execute a reasonable confidentiality agreement. This presumption of failure to negotiate in good faith is rebuttable. The commission will resolve disputes concerning the furnishing of information when raised by a party to the negotiation and may impose sanctions where appropriate.

(B) Mediation

(1) Mediation is a voluntary alternative dispute resolution process in which a neutral third party assists the parties in reaching their own settlement. At any point during the negotiation, any party or both parties to the negotiation may ask the commission to mediate any differences arising during the course of the negotiation

(2) To request mediation, a party to the negotiation shall notify in writing the chief of the telecommunications section of the commission's legal department and the chief of the telecommunications division of the utilities department of the commission. A copy of the mediation request should be simultaneously served on the other party in the dispute. The request shall include the following information:

(a) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.

(b) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.

(c) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiations and to whom inquiries should be made.

(d) The negotiation history, including meeting times and locations.

(e) A statement concerning the differences existing between the parties, including relevant documentation and arguments concerning matters to be mediated.

(f) The other party to the negotiation shall provide a written response within seven calendar days of the request for mediation to the chief of the telecommunications section of the commission's legal department and to the chief of the telecommunications section of the utilities department. The response to a request for mediation shall be simultaneously served upon the telephone company requesting the mediation.

(3) The commission will appoint a mediator to conduct the mediation. The mediator will promptly contact the parties to the negotiation and establish a time to commence mediation. The mediator will work with the parties to establish an appropriate schedule and procedure for the mediation.

(4) The mediator's function is to be impartial and to encourage voluntary settlement by the parties. The mediator may not compel a settlement. The mediator may schedule meetings of the parties, direct the parties to prepare for those meetings, hold private caucuses with each party, request that the parties share information, attempt to achieve a mediated resolution, and, if successful, assist the parties in preparing a written agreement.

(5) Participants in the mediation must have the authority to enter into a settlement of the matters at issue.

(6) Confidentiality

(a) Discussions during the mediation process shall be private and confidential between the parties. By electing mediation under this rule, the parties agree that no communication made in the course of and relating to the subject matter of the mediation shall be disclosed, except as permitted in this chapter.

(b) No party shall use any information obtained through the mediation process for any purpose other than the mediation process itself. This restriction includes, but is not limited to, using any information obtained through the mediation process to gain a competitive advantage.

(c) As provided in the Ohio Rules of Evidence 408, offers to compromise disputed claims and responses to them are inadmissible to prove the validity of that claim in a subsequent proceeding. Evidence of conduct or statements made in compromise negotiations are also not admissible in a future proceeding. This rule does not require the exclusion of evidence otherwise discoverable merely because it is presented in the course of compromise negotiations.

(7) Parties to the mediation shall reduce to writing the mediated resolution of all or any portion of the mediated issues and submit the resolution to the mediator.

(8) A member of the commission staff or an attorney examiner who serves as a mediator shall, by virtue of having served in such capacity, be precluded from serving in a decision-making role or as a witness on matters subject to mediation in a formal commission case involving the same parties and the same issues.

4901:1-7-09 **Arbitration of 47 U.S.C. 252 interconnection agreements.**

(A) Arbitration is an alternative dispute resolution process whereby parties present evidence and legal arguments to a neutral third party, called an arbitrator or an arbitration panel, who renders a recommended decision to the commission. Any party to the negotiation of an interconnection agreement may, during the period from the one hundred thirty-fifth to the one hundred sixtieth day (inclusive) after the date on which a local exchange carrier receives a request for negotiation, petition the commission to arbitrate any open issues.

(B) The commission will only arbitrate issues that have been unresolved between the parties and filed with the commission in the petition for arbitration or the response to the petition.

(C) To petition the commission for arbitration, a party to the negotiation shall file two copies of the request with the commission's docketing division. Docketing will assign a docket number using the industry code TP and the purpose code ARB.

(D) The petition must include the following information:

(1) The name, address, telephone number, e-mail, and fax number of the party to the negotiation making the request.

(2) The name, address, telephone number, e-mail, and fax number of the other party to the negotiation.

(3) The name, address, telephone number, e-mail, and fax number of the parties' representatives participating in the negotiation and to whom inquiries should be made.

(4) The negotiation history, including meeting times and locations.

(5) A list of the petitioning party's unresolved issues and a clear explanation of that party's position on the listed issues.

(6) All relevant nonproprietary documentation on any other issue discussed and resolved by the parties.

(7) A statement identifying information needed to decide unresolved issues or information that has been requested during negotiations but not yet provided.

(E) *Notice of petition for arbitration*

A petitioner requesting the commission to arbitrate unresolved issues shall provide a copy of the petition and accompanying documentation to the other party not later than the day on which the petition is filed with the commission.

(F) Opportunity to respond to petition

A nonpetitioning party to a petition for arbitration shall file a response to the petition within twenty-five calendar days after the petition to arbitrate is filed. The response should identify the nonpetitioning party's position on the petitioning party's unresolved issues. In addition, the responding party may identify additional unresolved issues with a clear explanation of its position on the additional issues it identifies.

(G) Commission responsibility

(1) Upon receipt of a timely and complete petition for arbitration, the commission shall appoint an arbitration panel. It is the function of the arbitration panel to recommend a resolution of the issues in dispute if the parties cannot reach a voluntary agreement.

(2) Within ten calendar days of the filing of a request for arbitration, the arbitration panel will schedule a conference to be held within thirty calendar days after the filing of the arbitration petition. The purpose of the conference is to plan an arbitration hearing date, identify witnesses to be presented at the hearing, discuss possible admissions or stipulations of uncontested matters, clarify the issues to be resolved, identify additional information needed to reach a decision on the unresolved issues, schedule the production of relevant documents and other information, identify issues which have been resolved, discuss or rule on any other appropriate procedural matters, and consider any other procedures that will expedite the arbitration process. The arbitration panel is authorized to order any party to provide information that it deems necessary to reach a decision on the unresolved issues and to establish the time period for providing the information.

(3) Unless otherwise determined by the arbitration panel, seven calendar days prior to the arbitration hearing, each party shall file an arbitration package that will assist the arbitrators in the conduct of the hearing. Unless previously submitted in writing to the panel, the arbitration package shall contain the list of issues to be arbitrated as identified by the petition

for arbitration or the response to the petition, the party's position as to each issue, identification of issues which have been resolved by the parties and a description of the resolution, the party's prefiled testimony, the exhibits which the party intends to introduce at the hearing, and a list of factual stipulations upon which the parties have agreed. Given the expedited nature of the arbitration process, factual stipulations are encouraged.

(4) Unless otherwise determined by the arbitration panel and the parties, the panel will conduct a hearing with prefiled testimony, transcription of the hearing, and cross-examination of witnesses. Unless determined otherwise by the arbitration panel after consultation with the parties, the length of the hearing, including oral argument, will be limited to four calendar days. Generally, the arbitration panel will conduct the hearing process according to the following procedures:

(a) The panel will provide the parties at least fifteen calendar days' written notice of the hearing.

(b) Unless consolidation of issues is permitted, only parties to the negotiation will be permitted to participate as parties to the arbitration hearing.

(c) The arbitration panel will permit discovery. Basic cost information to support prices for interconnection, services, or network elements should be exchanged expeditiously. The panel will establish a schedule for additional discovery by entry or at the prehearing conference.

(d) Whenever possible, the parties should enter into factual stipulations given the expedited hearing schedule.

(e) The chair of the arbitration panel will preside over the hearing.

(f) A written transcript of the hearing will be prepared.

(g) Witnesses shall be subject to cross-examination on their testimony. However, the arbitration panel shall have the authority to limit or prohibit cross-examination on policy or legal issues.

(h) Instead of requiring post-hearing briefs, the panel may hear oral arguments of the parties at the conclusion of the hearing.

(i) The arbitration panel will limit its consideration of any petition for arbitration and any response to the unresolved issues raised in the petition and response.

(j) The parties to the arbitration may be required to provide additional information as may be necessary for the arbitration panel to reach a decision on the unresolved issues.

Information provided to the arbitration panel shall also be provided at the same time to the other parties to the arbitration. If any party refuses or fails to respond on a timely basis to any reasonable request from the arbitration panel, the arbitration panel may proceed on the basis of the best information available on the record.

(k) The commission shall resolve each issue set forth in the petition and the response by imposing conditions that ensure that the resolution and conditions meet the requirements of 47 U.S.C. 251, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, establish rates for interconnection, services, or network elements in accordance with 47 U.S.C. 252(d), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and provide a schedule for implementation of the terms and conditions by the parties to the agreement.

(l) A commission arbitration award shall be issued not later than nine months after the date on which the local exchange carrier received the request for interconnection pursuant to 47 U.S.C. 252(b)(4)(c), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(5) Within thirty calendar days after the issuance of the arbitration award, the parties shall file their entire interconnection agreement, consistent with the commission's arbitration award, for commission review. A complete interconnection agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement, including all separate agreements covering such services or network elements.

(6) If the parties are unable to agree on an entire interconnection agreement, within thirty calendar days after the arbitration award is issued, each party shall file for commission review its version of the language that should be used in a commission-approved interconnection agreement. Unless otherwise authorized by the commission, no comments addressing disputed language filed under this provision will be entertained. The commission will select the competing language that most closely reflects the commission's award.

(7) Parties to the arbitration may seek extension of any of the deadlines outlined in this rule by the mutual agreement of the parties and the arbitration panel.

(H) Commission review

Unless otherwise determined by the commission, the agreement shall be deemed approved on the thirty-first calendar day.

(I) Nothing in these rules precludes the filing of a voluntarily negotiated interconnection agreement at any time.

(J) If the commission rejects a voluntary agreement resulting from negotiation or mediation, or an agreement arrived at by the arbitration process, the parties may file within thirty calendar days an application for rehearing for the commission's consideration. Alternatively, the parties may resubmit the agreement for commission approval within thirty calendar days following rejection if the parties have remedied the deficiencies found by the commission in its order.

(K) Confidentiality

The commission will treat information determined by the commission to be proprietary and confidential which is received during the mediation, negotiation, and/or arbitration process as confidential. The parties to the mediation, negotiation, and/or arbitration process are expected to negotiate appropriate protective orders for the exchange of information deemed to be proprietary. The commission's procedures concerning proprietary information contained in rule 4901-1-24 of the Administrative Code, shall govern the treatment of confidential and proprietary information.

(L) Waiver

(1) Notwithstanding any provision in these rules, the mediator, arbitration panel, or the commission may permit variance from these rules.

(2) The commission retains continuing jurisdiction and will maintain regulatory oversight over all approved interconnection agreements.

(M) Notice of approved interconnection agreements

All approved interconnection agreements may be obtained from the commission's docketing division or electronically by subscribing to a personal daily distribution list at the commission website.

4901:1-7-10 **Mediation for carrier-to-carrier disputes.**

(A) The mediation procedure in this rule is available for pending formal complaints between telephone companies. Any telephone company involved in a pending formal carrier-to-carrier complaint may ask the commission to mediate that matter. This rule is not intended to supersede any existing alternative dispute resolution provisions in approved interconnection agreements. These provisions are not intended to alter or diminish the commission's (or its staff's) authority to conduct investigations and to take remedial action when deemed necessary. This rule is not intended to alter or diminish the commission's (or its staff's) dispute resolution procedures for informal disputes.

(B) Mediation shall have the same meaning as that set forth in paragraph (B)(1) of rule 4901:1-7-08 of the Administrative Code.

(C) The mediation process shall be the same as that set forth in paragraphs (B)(2) to (B)(8) of rule 4901:1-7-08 of the Administrative Code.

4901:1-7-11 **Collocation.**

(A) If collocation is the requested method of interconnection, the incumbent local exchange carrier (ILEC) shall provide physical collocation of equipment necessary for interconnection or access to unbundled network elements at its premises. If upon demonstration by an ILEC and a determination by the commission that physical collocation is not practical for technical reasons, or because of space limitations, then the ILEC shall provide virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises, to the extent it is technically feasible. Such demonstration shall include, but not be limited to, the *provision of detailed floor plans or diagrams of such premises to the commission.* The commission determination shall be performed on a case-by-case basis.

(B) ILECs shall provide virtual collocation of equipment necessary for interconnection or access to unbundled network elements at its premises if requested by the interconnecting telephone company, even if the ILEC has floor space available for physical collocation, to the extent it is technically feasible.

(C) Collocation shall be provided pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to 47 C.F.R. 51.321 and 51.323, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and consistent with the commission's policies and decisions.

(D) In the event collocation fact-specific issues have not been addressed by the federal communications commission rules, the commission will determine such collocation issues on a case-by-case basis due to the fact that collocation is a very case- and fact-specific issue.

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

(A) Compensation principles

(1) Reciprocal compensation

(a) All telephone companies shall have the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic pursuant to 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(b) Transport is the transmission, and any necessary tandem switching of telecommunications traffic subject to 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, from the interconnection point between the two telephone companies to the terminating telephone company's end office switch that directly serves the called party, or equivalent facility provided by a telephone company other than an incumbent local exchange telephone company (ILEC).

(c) Termination is the switching of the telecommunications traffic at the terminating telephone company's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(2) Eligibility

Telephone companies shall be entitled to compensation for the use of network facilities they own or obtain by leasing from an ILEC (i.e., through purchasing unbundled network elements) to provide transport and terminate telecommunications traffic originated on the network facilities of other telephone companies. Nonfacilities-based, local exchange carriers (LECs) are not eligible for the transport and termination of telecommunications traffic compensation.

(3) Internet service provider (ISP) traffic

Compensation for the transport and termination of ISP traffic shall be addressed in arbitration cases, until the commission or the federal communications commission otherwise establishes a generic policy.

(B) Traffic measurement and identification

(1) All telephone companies exchanging reciprocal compensation traffic and switched access traffic shall measure minutes-of-use for compensation purposes if technically and economically feasible, unless they mutually agree to a different arrangement in the interconnection agreement. However, telephone companies that are unable to measure traffic terminating on their network may use an allocation factor between the types of traffic in order to bill the originating telephone company. All telephone companies shall be required to maintain such records of traffic measurement, which will be subject to audits for validation of traffic jurisdiction upon request of the interconnecting telephone company. Extended area service (EAS) trunks should only be used to carry the originally intended local traffic unless the LECs on both ends of the EAS trunks mutually agree otherwise. The commission, at its discretion in an arbitration proceeding, may require the interconnecting telephone companies to use separate dedicated trunk groups for reciprocal compensation, intraLATA switched access, and interLATA switched access traffic transport.

(2) All telephone companies exchanging traffic, where technically and economically feasible, as the provider of originating or transiting intrastate traffic that is terminated on the network of another telephone company, shall:

(a) For originating calls, transmit the telephone number of the party originating the call without alteration in the network signaling information.

(b) For forwarded calls, transmit the telephone number of the party originating the call, to the extent such information has been provided by the originating telephone company, without alteration in the network signaling information.

(c) For forwarded calls, the transiting telephone company is not responsible if the originating telephone company did not include the network signaling information.

(C) Traffic subject to reciprocal compensation

(1) Telecommunications traffic exchanged between LECs

As a LEC establishes its own local calling area(s), the perimeter of the local calling area of the ILEC with which the LEC is requesting to establish a reciprocal compensation arrangement shall constitute the demarcation for differentiating reciprocal compensation traffic versus switched access traffic for the purpose of the compensation arrangement. Any call originating and terminating within the boundary of such ILEC local calling area shall be subject to reciprocal compensation. The local calling area of the ILEC shall include nonoptional EAS approved by the commission while excluding optional EAS arrangements.

(2) Telecommunications traffic exchanged between a LEC and a commercial mobile radio service provider that, at the beginning of the call, originates and terminates within the same major trading area as defined in 47 C.F.R. 24.202(a), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, shall be subject to reciprocal compensation.

(D) Reciprocal compensation arrangements

(1) Rates, terms, and conditions for the transport and termination of reciprocal compensation traffic shall be established through either negotiated or arbitrated agreements. An ILEC's rates for transport and termination of reciprocal compensation traffic shall be established, at the commission's discretion in an arbitration proceeding, on the basis of one of the following:

(a) The forward-looking economic costs of such offerings, using a cost study pursuant to rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code.

(b) Interim rates as provided in rule 4901:1-7-18 of the Administrative Code.

(c) A bill and keep arrangement, as provided in paragraph (D)(3) of this rule.

(2) Symmetrical reciprocal compensation

(a) For purposes of this section, symmetrical rates are rates that a telephone company assesses upon an ILEC for transport and termination of reciprocal compensation traffic equal to the rates that the ILEC assesses upon the telephone company for the same services.

(b) Rates for transport and termination of reciprocal compensation traffic shall be symmetrical unless the non-ILEC telephone company (or the smaller of two ILECs) proves to the commission, on the basis of a forward-looking economic cost study pursuant to rule 4901:1-7-19 of the Administrative Code, that its forward-looking costs for its network exceed the costs incurred by the ILEC (or the larger ILEC), and that justifies a higher rate.

(c) If both parties to the compensation arrangement are ILECs, symmetrical rates for transport and termination of reciprocal compensation traffic shall be based on the larger telephone company's forward-looking costs, unless the parties voluntarily agree to different rates.

(d) If neither party to the compensation arrangement is an ILEC, symmetrical rates for transport and termination of reciprocal compensation traffic shall not exceed the highest tandem interconnection total element long run incremental cost-based rate charged by the largest ILEC in the state, unless the parties voluntarily agree to different rates.

(e) The commission may establish symmetrical transport and termination rates for reciprocal compensation traffic that vary according to whether this traffic is routed through a tandem switch or directly to an end office switch.

(i) Where the telephone company interconnects at the ILEC's tandem office and the switch of the telephone company serves a geographical area comparable to the area served by that ILEC's tandem switch, the telephone company is eligible for the tandem interconnection rate for the transport and termination of reciprocal compensation traffic over this tandem interconnection facility.

(ii) Where the telephone company interconnects at the ILEC's end office, regardless of the geographical area served by the telephone company's switch, the telephone company is eligible for the end office termination rate only for the transport and termination of reciprocal compensation traffic over this end office interconnection facility.

(3) Bill and keep

(a) Bill and keep arrangements are those agreements in which neither of the two interconnecting telephone companies charge the other for the termination of reciprocal compensation traffic that originates on the other telephone company's network. A negotiated or arbitrated interconnection agreement between telephone companies may employ bill and keep as a method of compensation for the transport and termination of reciprocal compensation traffic.

(b) Nothing in these rules precludes the commission from presuming that the amount of reciprocal compensation traffic from one network to the other is roughly balanced with the amount of reciprocal compensation traffic flowing in the opposite direction and is expected to remain so, unless a party rebuts such a presumption.

(c) The commission, at its discretion, may adopt specific thresholds for determining when reciprocal compensation traffic is roughly balanced, and include provisions for compensation obligations if traffic becomes significantly out of balance based on a showing that the traffic flows are inconsistent with the thresholds adopted by the commission.

(4) Rate structure

(a) Rates for transport and termination of reciprocal compensation traffic shall be structured consistent with the manner that telephone companies incur those costs pursuant to paragraph (B) of rule 4901:1-7-17 of the Administrative Code.

(b) LECs shall offer flat-rate compensation to other telephone companies for dedicated facilities purchased for the transport of reciprocal compensation traffic.

(c) The rate of a telephone company providing transmission facilities dedicated to the transmission of reciprocal compensation traffic between two telephone companies' networks shall recover only the costs of the portion of that trunk capacity used by an interconnecting telephone company to send traffic that will terminate on the providing telephone company's network. Such proportion may be measured during peak periods.

(E) LECs may block calls originated to and/or terminated from another telephone company that has not requested an interconnection agreement with the LEC for the establishment of reciprocal compensation arrangement for the transport and termination of telecommunications traffic, and has not been responsive to a request for interconnection for the establishment of reciprocal compensation arrangement for the transport and termination of telecommunications traffic, in accordance with 47 U.S.C. 251(a)(1) and 47 U.S.C. 251(b)(5), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(F) This section shall not be construed to preclude telephone companies from negotiating and voluntarily agreeing to other interconnection and compensation arrangements.

4901:1-7-13 **Transit traffic compensation.**

(A) Transit traffic is traffic that originates on one telephone company's network, terminates on a second telephone company's network, and is transmitted using an intermediate third telephone company's network facilities.

(B) The intermediate telephone company carrying traffic originating and terminating on other telephone company's networks shall be compensated for the use of its network facilities.

(C) An intermediate telephone company may not refuse to carry transit traffic if:

(1) It is appropriately compensated for the use of its network facilities necessary to carry the transit traffic.

(2) The originating and terminating telephone companies have a compensation agreement in place with the intermediate telephone company that sets the rates, terms, and conditions for the compensation of such transit traffic.

(D) The intermediate telephone company must be compensated at the intermediate telephone company's total element long run incremental cost (TELRIC) based transit traffic compensation rates. Until such time as the commission approves telephone company-specific TELRIC-based transit traffic compensation rates, an intermediate telephone company should be compensated, on an interim basis, at its tariffed switched access rates subject to a true up of these rates.

(E) This section shall not be construed to preclude telephone companies from negotiating other transit traffic interconnection and compensation arrangements.

(F) The originating and terminating telephone companies in a transit traffic arrangement are both obligated to establish a transport and termination agreement between them pursuant to 47 U.S.C. 251(b)(5) and 251(a)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

4901:1-7-14 **Compensation for intrastate switched access traffic and carrier-to-carrier tariff.**

(A) For purposes of this rule:

(1) "Nonrural incumbent local exchange carrier" (nonrural ILEC)" shall mean an incumbent local exchange carrier that is not a "rural telephone company" under 47 U.S.C. 153(37), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(2) "Rural competitive local exchange carrier" (rural CLEC)" shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any customers located within either:

(a) An incorporated place of fifty thousand inhabitants or more based on the most recently available population statistics of the census bureau.

(b) An urbanized area, as defined by the census bureau.

(B) The current prevailing incumbent local exchange carrier (ILEC) intrastate switched access tariffs, including all rates, terms, and conditions pursuant to case nos. 83-464-TP-COI and 00-127-TP-COI, shall be used by ILECs for compensation for termination and origination of switched access telecommunications traffic originated from and/or terminated by other telephone companies until the commission rules otherwise. Any change in the ILEC intrastate switched access tariffs shall be filed as an ATA case and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-08 of the Administrative Code.

(C) When filing for certification under rule 4901:1-6-10 of the Administrative Code, facilities-based competitive local exchange carriers (CLEC) shall tariff the rates, terms, and conditions for compensation for the termination and origination of intrastate switched access traffic originated and/or terminated by other telephone companies.

(D) A facilities-based CLEC, an ILEC's affiliate holding a CLEC certification, or an ILEC operating outside its ILEC service area, shall cap their rates, on a rate element basis, at the current rates of the ILEC providing service in the CLEC's service area, for the termination and origination of intrastate switched access traffic, unless the CLEC is a rural CLEC competing with a nonrural ILEC and its rates are capped at national exchange carrier association access rates.

(E) A facilities-based CLEC carrier-to-carrier intrastate switched access tariff not filed as part of its certification process pursuant to rule 4901:1-6-10 of the Administrative Code, shall be filed as an ATA case and shall be subject to the thirty-day approval procedure set forth in rule 4901:1-6-08 of the Administrative Code.

4901:1-7-15 **Meet point billing (MPB).**

(A) MPB arrangements shall be used in billing for compensation for jointly provisioned switched access service to another carrier by more than one local exchange carrier (LEC), similar to MPB arrangements currently used by the incumbent local exchange carriers.

(B) LECs may use MPB arrangements for compensation of other types of traffic exchanged between them.

(C) Under MPB compensation arrangements, the meet point can be any technically feasible point of interconnection pursuant to paragraph (A)(6) of rule 4901:1-7-06 of the Administrative Code.

4901:1-7-16 **Unbundled network elements (UNE).**

General unbundling reuqirements

(A) Each incumbent local exchange carrier (ILEC) shall have the duty to provide, to any requesting telephone company for the provision of telecommunications service, nondiscriminatory access to network elements, pursuant to 47 U.S.C. 251(c), and 251(d)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, on an unbundled basis at any technically feasible point consistent with 47 C.F.R. 51.307-321, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(B) Each ILEC shall provide UNEs on rates, terms, and conditions that are just, reasonable, and nondiscriminatory pursuant to 47 U.S.C. 251(c)(3) and 252, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(C) Unbundled network element rates, terms, and conditions shall be established through negotiation between telephone companies upon receipt of a request for interconnection pursuant to rule 4901:1-7-06 of the Administrative Code, or through arbitration pursuant to rule 4901:1-7-09 of the Administrative Code.

(D) Unbundled network elements shall be priced at cost-based rates pursuant to the pricing standards set forth in rules 4901:1-7-17 and 4901:1-7-19 of the Administrative Code.

4901:1-7-17 **Carrier-to-carrier pricing.**

(A) General principles

(1) These standards apply to pricing of interconnection, unbundled network elements, methods of obtaining interconnection and access to unbundled network elements (including collocation), and reciprocal compensation pursuant to 47 U.S.C. 251(c) and 251(d)(2), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. All of these provisions shall be referred to as "elements" for the purpose of this rule.

(2) An incumbent local exchange carrier's (ILEC's) rates for each element it offers shall comply with the rate structure standards as described in paragraph (B) of this rule.

(3) The commission, at its discretion in an arbitration proceeding, shall set the ILEC's rates for each element it offers by either:

(a) Utilizing interim rates that are based on the best information available to the commission about the ILEC's forward-looking economic costs. Such interim rates shall be subject to a true up pursuant to paragraph (A)(4) of this rule.

(b) Pursuant to the forward-looking economic cost-based pricing methodology described in rule 4901:1-7-19 of the Administrative Code.

(4) The interim rate(s) for an element(s) shall cease to be in effect once the commission determines rates based on forward-looking economic costs pursuant to rule 4901:1-7-19 of the Administrative Code, submitted by the ILEC and approved by the commission. If the interim rate for an element is different from the rate established by the commission pursuant to rule 4901:1-7-19 of the Administrative Code, the involved telephone companies shall make adjustments to the past rate charged for that element which allow each telephone company to be charged at a rate level it would have been charged had the interim element rate equaled the rate later established by the commission pursuant to rule 4901:1-7-19 of the Administrative Code. The involved telephone companies may consider the financial impact of the true up and negotiate the period of time over which the true up takes place.

(5) Any ILEC offering of a volume discount, term discount, or geographically deaveraged price of an element, shall be made available on a nondiscriminatory basis to all telephone companies who meet the discount or the deaveraging criteria.

(6) The ILEC shall prove to the commission's satisfaction that the price for each element provided to a requesting telephone company does not exceed the forward-looking economic cost per unit of providing that element unless otherwise negotiated.

(7) The rate that an ILEC assesses for elements shall not vary on the basis of the class of customer served by the requesting telephone company, or on the type of services that the requesting telephone company purchasing such elements uses them to provide.

(B) Rate structure

(1) The following rate structure standards shall apply to rates set by the commission in arbitration proceedings pursuant to rule 4901:1-7-09 of the Administrative Code. Local exchange carriers (LECs) are not precluded from negotiating alternative rates or rate structures.

(2) General rate structure standards

The following rate structure standards shall apply regardless of whether the price of an element is set pursuant to a forward-looking cost study or the interim rate approach.

(a) Rates for an element shall be structured consistent with the manner in which the costs of providing that element are incurred.

(i) Recurring costs shall be recovered through recurring charges, unless an ILEC can prove to the commission's satisfaction that such recurring costs are de minimus when the costs of administrating the recurring charges would be excessive in relation to the amount of the recurring costs.

(ii) An ILEC may recover the forward-looking nonrecurring economic costs through recurring charges allocated among requesting telephone companies and spread over a reasonable period of time. The commission on a case-by-case basis shall evaluate the reasonableness of such cost recovery mechanisms.

(b) The costs of dedicated facilities shall be recovered through flat-rated charges.

(c) The costs of shared facilities shall be recovered in a manner that efficiently apportions those costs among users. Costs of shared facilities may be recovered through either usage sensitive charges or capacity-based, flat-rated charges. The commission shall determine on a case-by-case basis the reasonableness of the proposed cost recovery mechanism.

(d) An ILEC may establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences. To establish geographically-deaveraged rates, the ILEC may use its existing density-related zone plans established pursuant to 47 C.F.R. 69.123, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, other cost-related zone plans established pursuant to state law, or another cost-related zone plan that creates a minimum of three cost-related zones approved by the commission.

(3) Rate structure for specific rate elements

The following element-specific rate structure standards shall apply in addition to the standards set forth in paragraph (B)(2) of this rule.

(a) Local loop costs shall be recovered through flat-rated charges.

(b) Dedicated transmission link costs shall be recovered through flat-rated charges, except for the purpose of establishing a reciprocal compensation rate for providing transmission facilities dedicated to the transmission of traffic between two carriers' networks, which is provided pursuant to paragraph (D)(4)(c) of rule 4901:1-7-12 of the Administrative Code.

4901:1-7-18 **Interim rates for forward-looking economic prices.**

(A) Interim rates may be used by the commission in setting prices while arbitrating disputed issues pursuant to rule 4901:1-7-9 of the Administrative Code.

(B) Interim rates shall be set by the commission when it determines that it does not have sufficient time to review cost information provided by an incumbent local exchange carrier or when it appears that, there may be significant concerns with the cost studies from the commission's cursory review.

4901:1-7-19 **Forward-looking economic costs.**

(A) The forward-looking, economic, cost-based price of an element shall be set at a level that allows the providing carrier to recover the sum of the total element long-run incremental cost (TELRIC) of the element and a reasonable allocation of the forward-looking, joint and common costs.

(B) TELRIC

(1) Principal

The TELRIC of an element is the forward-looking economic cost over the long-run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated while holding all other products' volumes constant.

(2) Study period

The commission will consider a cost study period of five years to be reasonable. An incumbent local exchange carrier (ILEC) shall have the burden of proof, to the commission's satisfaction, that such study period would not be reasonable for a specific element.

(3) Technology

The TELRIC of an element shall be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the ILEC's wire centers.

(4) Cost of capital

The TELRIC of an element shall be calculated using the forward-looking cost of capital (debt and equity) reflecting the risks of a competitive market, that includes a reasonable level of profit. An ILEC may use an unbundled network element-specific, forward-looking, cost of capital in calculating the TELRIC-based cost for that unbundled network element.

(5) Depreciation

The TELRIC of an element shall be calculated using the economic depreciation rates that reflect the forward-looking economic lives of the equipment and the economic value of an asset. In doing so, an ILEC may accelerate recovery of the initial capital outlay for an asset over its life to reflect the anticipated decline in its value.

(6) Federal, state, and local income taxes

(a) Federal, state, and local income tax expenses shall be determined based on the TELRIC.

(b) Since federal, state, and local taxes are applicable, recognition shall be given to the "tax-on-tax" situation that results from the deductibility of state and local tax when federal taxes are paid.

(7) Inflation

TELRIC studies shall reflect costs that are expected to be incurred during the study period. Such costs shall be projected to their anticipated level over the study period by using prices in supplier contracts or an appropriate index of future cost, such as supplier estimates of price changes, indices developed from labor contracts, or other relevant indices.

(8) Investment development

(a) Material investment

(i) The development of the material component of investment shall begin with the current vendor price(s) for the hardware and software resources required to provide the element, projected over the study period as described above.

(ii) Other components of material investment shall include inventory, supply expenses, and sales taxes.

(iii) The sales tax component of investment shall be calculated by applying a sales tax factor if applicable. The factor shall reflect taxes imposed by state and local taxing bodies on material purchases. It shall be applied to the material and inventory components.

(iv) The supply component shall include the expense incurred by the ILEC for storage, inventory, and delivery of material.

(b) Labor investment

There are two major components of labor investment, vendor-related and ILEC-related.

(i) Vendor-related labor investment shall include vendor-provided installation and engineering.

(ii) ILEC-related labor investment may be developed based on account averages or from estimates of product-specific plant engineering and installation hours.

(iii) Total labor costs shall be computed by multiplying the account average or product specific work times by the appropriate labor rate.

(iv) Hourly labor rates include the operational wages, benefits, paid absence, and, if applicable, tools and miscellaneous expenses.

(9) Fill factors

The investment developed above shall be adjusted to reflect reasonably accurate "fill factors". Fill factors are the proportion of a facility that will be filled with network usage during the study period. The ILEC shall have the burden to justify the reasonableness of the fill factors used in its TELRIC studies.

(10) Maintenance

Maintenance costs are incurred in order to keep equipment resources in usable condition.

(a) Included in this classification are: direct supervision; engineering associated with maintenance work; labor and material costs incurred in the upkeep of plant; rearrangements and changes of plant; training of maintenance forces; testing of equipment and facilities; tool expenses; and miscellaneous expenses.

(b) The specific maintenance cost estimates associated with the element in question or investment-related annual maintenance factors may be applied to arrive at an annual maintenance cost.

(c) The factor shall be specific to the investment and expense accounts associated with the element and developed from the most current data reasonably available to the ILEC.

(11) The forward-looking, economic, cost per unit of an element shall equal the forward-looking, economic, cost of the element, divided by a reasonable projection of the sum of the total number of units of that element that the ILEC is likely to provide to requesting telephone companies and the total number of units of that element that the ILEC itself is likely to use in offering its own services, during the study period.

(12) In the determination of the total number of units:

(a) If the ILEC offers an element on a flat-rate basis, the number of units shall be defined by the ILEC as the discrete number of elements that the ILEC uses or provides (e.g., number of loops or number of ports).

(b) If the ILEC offers an element on a usage-sensitive basis, the number of units shall be defined by the ILEC as the unit of measurement of the usage (e.g., number of minutes-of-use or database queries).

(13) The TELRIC of an element shall reflect any cost-based volume discount, term discount, and/or geographic-deaveraging the ILEC plans to offer.

(C) Forward-looking, joint and common costs

(1) Forward-looking common costs are economic costs incurred by the ILEC in providing all elements and services provided by the ILEC that cannot be attributed directly to an individual element or service.

(2) Forward-looking joint costs are those forward-looking costs that are common to only a subset of the elements or services provided by the ILEC.

(3) Reasonable allocation of forward-looking, joint and common costs:

(a) Forward-looking joint costs which are common to only a subset of the elements or services provided by the ILEC, shall be allocated to that subset, and should then be allocated among the individual elements or services in that subset, based upon measures of utilization, including such measures as: number of circuits, minutes-of-use, and bandwidth. The commission shall evaluate the reasonableness of the joint cost allocation methodology on a case-by-case basis.

(b) Forward-looking common costs shall be allocated among elements and services in a reasonable manner. The ILEC may allocate forward-looking common costs using a fixed allocator as a markup over the sum of the TELRIC and the allocated forward-looking joint cost allocated to such element. The ILEC shall have the burden of proving that the fixed allocator permits only reasonable recovery of any forward-looking common costs.

4901:1-7-20 **Cost study requirements.**

(A) When a local exchange carrier (LEC) submits a cost study to the commission staff, it must simultaneously submit a complete set of supporting work papers and source documents.

(B) The work papers must clearly and logically present all data used in developing the estimate and provide a narrative explanation of all formulas or algorithms applied to these data. These work papers must allow others to replicate the methodology and calculate equivalent or alternative results using equivalent or alternative assumptions.

(C) The work papers must clearly set forth all significant assumptions and identify all source documents used in preparing the cost estimate, including the technology being used in providing the element.

(D) The work papers must be organized so that a person unfamiliar with the study will be able to work from the initial investment, expense, and demand data to the final cost estimate. Every number used in developing the study must be clearly identified in the work papers as to what it represents. Further, the source should be clearly identifiable and readily available, if not included with the work papers.

(E) Any input expressed as a "dollars per minute," "dollars per foot," "dollars per loop," "dollars per port," and the like must be traceable back to the original source documents containing the number of dollars, minutes, feet, loops, ports, and the like from which these figures were calculated.

(F) To the extent practicable, all data and work papers must be provided in electronic format.

4901:1-7-21 **Resale.**

(A) Resale provisioning

(1) All local exchange carriers (LECs) must make all telecommunications services available for resale by any LEC and shall not contain unreasonable, discriminatory, or anti-competitive conditions, or limitations.

(2) All incumbent local exchange carriers (ILECs) must make available for resale at wholesale rates any retail telecommunication services that the ILEC provides at retail to subscribers who are not telephone companies.

(3) Each ILEC shall be required to provide nondiscriminatory, automated operational support systems. Such systems shall enable other LECs reselling the ILEC's retail telecommunications services to preorder and order service, installation, repair, and number assignment; monitor network status; and bill for local service. Such support systems shall include, but not be limited to:

(a) Preordering and ordering functionalities for processing customer service orders.

(b) Provisioning requirements to ensure electronic transmission of data to the LEC providing telecommunications services for resale, as well as order and service completion confirmation.

(c) Repair and maintenance requirements.

(4) ILECs are required to provide branding of operator, call completion, or directory assistance services offered for resale.

(B) Resale of retail promotions

(1) Promotions of recurring charges for retail services offered by an ILEC lasting more than ninety calendar days, as measured on a per customer basis in a twelve-month time frame, or a promotion of the comparable cash value offered by a ILEC shall be made available for resale at the wholesale rates.

(2) Promotions of recurring charges for retail services offered by a competitive local exchange carrier (CLEC) lasting more than ninety calendar days, as measured on a per customer basis in a twelve-month time frame, or a promotion of the comparable cash value offered by a CLEC shall be made available for resale.

(C) Resale of contracts

(1) All LECs must make available for resale all retail telecommunication service contracts. The contract is available for resale only in its entirety, and is available to similarly situated customers other than the same customer under the LEC contract.

(2) ILECs must make these contracts available at the wholesale rate discussed in paragraph (E) of this rule.

(3) LECs may, subject to commission approval, place reasonable restrictions on the resale of contracts including the resale of residential services to business customers.

(D) Resale of lifeline

LECs purchasing lifeline services for resale may only resell those services to qualifying lifeline customers and must pass on to the customer the full amount of the applicable lifeline discount. The LEC purchasing lifeline services for resale is responsible for certification and validation of the eligibility of the lifeline customers it serves. The ILEC must sell lifeline service to that reseller at the wholesale rate established for basic local exchange service, less any lifeline discount for which the ILEC is eligible to be reimbursed by existing federal and/or state funding mechanisms.

(E) Resale pricing

(1) ILEC's retail telecommunications services available for resale to any telephone company shall be priced on a wholesale basis. Wholesale prices shall be determined on the basis of the retail rates charged to customers for the telecommunications service under consideration, excluding the portions thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the ILEC.

(2) The commission, at its discretion, may establish the wholesale rates utilizing either:

(a) Interim wholesale rates that are based on the best information available to the commission, about the ILEC avoided costs. In that case, the commission may establish a single discount percentage rate that shall be used to establish interim wholesale rates for each telecommunications service. Such interim rates may be subject to a true up consistent with principles outlined in paragraph (A)(4) of rule 4901:1-7-17 of the Administrative Code.

(b) Rates that are equal to the ILEC's existing retail rates for the telecommunications service, less avoided retail costs through the commission's review and approval of the ILEC's avoided cost study.

(3) Avoided retail costs for large ILECs shall be those costs that will be avoided when an ILEC provides a telecommunications service for resale at wholesale rates to a requesting telephone company.

(a) For the ILECs that are designated as class A companies pursuant to 47 C.F.R. 32.11, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, except as provided in paragraph (E)(3)(d) of this rule, the avoided retail costs shall:

(i) Include, as direct costs, the costs recorded in uniform system of accounts (USOA) account numbers 5301 (telecommunications uncollectibles) in proportion to the avoided direct expenses, 6611 (product management), 6612 (sales), 6613 (product advertising), 6621 (call completion services), 6622 (number services), and 6623 (customer services).

(ii) Include, as indirect costs, a portion of the costs recorded in USOA accounts 6121-6124 (general support expenses), 6711, 6712, 6721-6728 (corporate operations expenses).

(iii) Not include plant-specific expenses and plant nonspecific expenses other than general support expenses *(6110-6116 and 6210-6565).*

(b) Costs included in accounts 6611-6613 and 6621-6623 described in paragraph (E)(3)(a)(i) of this rule, may be included in wholesale rates only to the extent that the ILEC proves to the commission that specific costs in these accounts will be incurred and are not avoidable with respect to the services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services.

(c) Costs included in accounts 6110-6116 and 6210-6565 described in paragraph (E)(3)(a)(iii) of this rule, may be treated as avoided retail costs, and excluded from the retail rates, only to the extent that a party proves to the commission that specific costs in these accounts can reasonably be avoided when an ILEC provides a telecommunications service for resale to a requesting carrier.

(d) For the ILECs that are designated as class B companies under 47 C.F.R. 32.11, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and that record information in summary accounts instead of specific USOA accounts, the entire relevant summary accounts may be used in lieu of specific USOA accounts listed in paragraphs (E)(3)(a) to (E)(3)(c) of this rule.

(4) Avoided retail costs for small ILECs will be determined on a case-by-case basis.

(5) An ILEC may, upon commission approval, set wholesale discounts that are not uniform provided the ILEC demonstrates to the commission that those rates are set on the basis of an appropriate avoided-cost study.

(6) The ILEC shall develop a two-pronged wholesale discount, one discount that applies when the reseller purchases operator services and directory assistance, and a second discount when these services are not purchased in their entirety.

(F) When an ILEC provides exchange services to a requesting carrier at wholesale rates for resale, the ILEC shall continue to assess the intrastate access charges provided in its intrastate tariffs upon the requesting carrier. The ILEC access charges assessed to the requesting carrier must be at the tariffed rate not at an avoided-cost discounted rate.

4901:1-7-22 **Customer migration.**

(A) Each competitive local exchange carrier (CLEC) shall be required to provide systems to facilitate the migration of customers between local exchange carriers (LECs). Such systems may be manual but must enable another LEC to migrate customers efficiently from that CLEC's network. Such systems shall include, but not be limited to systems required to preorder, order, install, and repair service, and billing for local service. CLEC responses to customer service record requests shall include information sufficient to facilitate customer migration between LECs. For the purposes of this rule, customer service information includes but is not limited to the following:

(1) Customer service records – detailed identification of the regulated services to which the customer is subscribed.

(2) Service completion confirmation -- the verification and notification that all tasks associated with a service order have been completed.

(3) Line loss notification – the notification to a LEC that a customer has initiated a transition to another LEC.

(4) Completion notices – notice that all work to effect a customer migration has been completed.

(5) Circuit identification - the manner and system a carrier uses to identify physical circuits under its control, if applicable.

(6) 911 and directory listings.

(B) Incumbent local exchange carriers (ILECs) are required to provide systems to facilitate the migration of customers between local exchange carriers (LECs) pursuant to 47 C.F.R. 51.319(g), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code, and consistent with any existing ILEC-specific commission requirement.

(C) All telephone companies shall use the relevant industry developed standards and timelines, where they exist, or a mutually agreed upon equivalent, for the exchange of customer account information between telephone companies.

(D) Telephone companies responding to local service requests shall follow industry standards, including North America numbering council timelines. Telephone companies responding to a request for customer service records shall provide such information to the requesting telephone company within two business days.

(E) No telephone company, having obtained facilities, resources, or information for the purpose of serving a specific customer, shall, upon the receipt of a request to migrate that customer, continue to hold, or fail to release said facilities, resources, or information solely in order to prevent or delay the migration of that customer. In the event of a dispute, the telephone company retaining the facilities, resources, or information carries the burden of proof to demonstrate a valid reason for retaining the facilities, resources, or information in question.

(F) A telephone company losing its customer shall not use information obtained as a result of the customer migration process to solicit a competing telephone company's customer while the competing telephone company is in the process of obtaining from such telephone company the facilities, resources, or information necessary to serve that same customer.

(G) No acquiring telephone company shall require, instruct, or advise any new customer to first establish service with, migrate to, or otherwise use transitionally another telephone company, without the consent of such other telephone company, for an interim period of time before becoming a customer of the acquiring telephone company.

(H) Telephone companies shall submit customer service record requests to the customer's existing telephone company and not to the underlying network provider.

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

(A) Authorization

(1) Local exchange carriers (LECs) are subject to all constitutional, statutory, and administrative rights and responsibilities placed upon public utilities for use of public rights-of-way.

(2) Private rights-of-way for all telephone companies are subject to negotiated agreements with the private property owner, exclusive of eminent domain considerations.

(3) Telephone companies are prohibited from entering into exclusive use agreements of private building riser space, conduit, and/or closet space.

(4) The commission reserves the right to require any or all such arrangements between public utilities and private landowners to be submitted to the commission for its review and approval, under section 4905.31 of the Revised Code.

(B) Rates, terms, and conditions

Rates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and right-of-way shall be established through negotiated arrangements or tariffs. Such access shall be established pursuant to 47 U.S.C. 224; 47 C.F.R 1.1401 to 1.1403; 47 C.F.R 1.1416 to 1.1418; and the formulas in 47 C.F.R 1.1409(e), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code. The commission will address, on a case-by-case basis, any fact-specific issues related to access to poles, ducts, conduits, and right-of-way. Any change in the public utility's tariffed rates, terms, and conditions for access to poles, ducts, conduits, or right-of-way shall be filed in a UNC proceeding.

(C) Coordination

LECs shall coordinate their right-of-way construction activity with the affected municipalities and landowners. Nothing in this section is intended to abridge the legal rights and obligations of municipalities and landowners.

4901:1-7-24 **Local number portability (LNP).**

(A) Telephone companies do not have a proprietary interest in the customer's telephone number. Customers must have the ability to retain the same telephone number as they change from one telephone company to another at the same location.

(B) All telephone companies must provide permanent LNP pursuant to 47 C.F.R. 52.21-52.33, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

4901:1-7-25 **Number optimization.**

All number holding telephone companies, including commercial mobile radio service, must adhere to the following requirements:

(A) Upon request, provide copies of all NXX code requests to the North American numbering plan administrator (NANPA) or thousands block requests to the pooling administrator to the chief of the telecommunications division of the utilities department of the commission.

(B) Initial and growth NXX code or thousands block requests must comply with applicable federal regulation.

(C) The telephone company must obtain NXX codes from NANPA or thousands blocks from the pooling administrator only for those areas where it is certified and plans to activate service within six months. If a telephone company is unable to meet the six-month deadline for placing a code or thousands block into service by returning a part 4 form to NANPA or to the pooling administrator, then further action regarding this code or thousands block is the responsibility of the commission and the telephone company.

(D) The telephone company will adopt all current and future number resource optimization measures set forth by the federal communications commission and the commission orders.

4901:1-7-26 **Competition safeguards.**

(A) Code of conduct

(1) Disclosure of information

(a) Definitions

(i) For the purpose of this rule, "customer proprietary network information" (CPNI) shall be defined in accordance with 47 U.S.C. 222(f)(1), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(ii) For the purpose of this rule, "subscriber list information" shall be defined in accordance with 47 U.S.C. 222(f)(3), as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(b) Customer proprietary network information (CPNI)

(i) The use of CPNI by any telephone company must comply with 47 U.S.C. 222, and 47 C.F.R. 64.2001 to 64.2009, as effective in paragraph (A) of rule 4901:1-7-02 of the Administrative Code.

(ii) No local exchange carrier (LEC) shall access or use the CPNI held by either an interconnecting LEC or a LEC reselling its services for the purpose of marketing its services to either the interconnecting LEC's customers or reselling LEC's customers.

(c) To the extent a telephone company makes subscriber list information available to affiliated competitors within its service territory for purposes other than the publishing of directories, it must, upon request, also do so on a nondiscriminatory basis with all unaffiliated competitors certified to provide service in its service territory.

(i) This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.

(ii) This provision does not apply to information subject to a customer request to either release or withhold information.

(2) Records

All telephone companies shall maintain information, consistent with federal communications commission (FCC) requirements, to enable the commission to determine whether they have satisfied paragraph (A) of this rule.

(B) Separate accounting

(1) Each incumbent local exchange carrier (ILEC) shall maintain its books, records, and accounts in accordance with the FCC's accounting requirements, as appropriate to the categorization of the ILEC, and as revised from time to time.

(2) Unless otherwise directed by the commission, all ILECs shall follow class B uniform system of accounts for annual reporting purposes.

(C) Financial arrangements

The financial arrangements of an ILEC are subject to section 4905.40 of the Revised Code, except as the commission may otherwise approve.

4901:1-7-27 **Reporting requirements.**

(A) All local exchange carriers (LECs) that report market information to the federal communications commission (FCC) must submit to commission staff the Ohio market information reports, on a statewide basis in the same format and content as filed in the FCC form 477.

(B) This LEC market information must be reported on a semi-annual basis and at the same time it is filed with the FCC.

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

(A) This rule establishes procedures pursuant to which a telephone company who files a complaint against another telephone company pursuant to section 4905.26 of the Revised Code, may request an expedited ruling when the dispute directly affects the ability of a telephone company to provide uninterrupted service to its customers or precludes the provisioning of any service, functionality, or network element under an interconnection agreement. The attorney examiner has the discretion to determine whether the resolution of the complaint may be expedited based on the complexity of the issues or other factors deemed relevant. Unless otherwise determined during the course of the proceeding, the provisions and procedures set forth in section 4905.26 of the Revised Code, and Chapters 4901-1 and 4901-9, of the Administrative Code, shall apply.

(B) Any request for expedited ruling shall be filed at the same time and in the same document as the complaint filed under section 4905.26 of the Revised Code. The complaint shall be entitled "complaint and request for expedited ruling." A complaint seeking an expedited ruling shall also state the specific circumstances that make the dispute eligible for an expedited ruling. The complainant shall simultaneously serve a copy of the complaint and request for expedited ruling on the respondent and the chief of the telecommunications section of the legal department by hand delivery or facsimile on the same day as it is filed with the commission.

(C) The respondent shall file a response to the request for expedited ruling within seven calendar days after the filing of the complaint. The respondent shall simultaneously serve a copy of the response on the complainant and the chief of the telecommunications section of the legal department by hand delivery or facsimile on the same day as it is filed with the commission.

(D) After reviewing the complaint and the response, an attorney examiner will determine whether the complaint warrants an expedited ruling. If so, the attorney examiner shall direct the respondent to file its answer and make arrangements for the hearing, which shall commence no later than thirty calendar days after the filing of the complaint. The attorney examiner shall notify the parties, not less than five calendar days before the hearing of the date, time, and location of the hearing. If the attorney examiner determines that the complaint is not eligible for an expedited ruling, the attorney examiner shall so notify the parties within seven calendar days of the filing of the response.

(E) The attorney examiner may require the parties to file an issues list on or before the commencement of the hearing. The attorney examiner shall require the parties to file their issues list under the same deadline. The issues list shall identify all issues to be addressed, the witness, if any, who will be addressing each issue, a short synopsis of each witness's position on each issue, and a citation to the involved interconnection agreement and any other legal authority that the party believes supports the parties' position.

(F) The attorney examiner shall draft a written decision on the complaint and schedule the matter for commission consideration within thirty calendar days after the later of: 1) the close of the hearing, or 2) any briefs that are requested to be filed.

4901:1-7-29 **Local exchange carrier default.**

(A) In the event a local exchange carrier (LEC) intends to terminate another LEC's access to its network for nonpayment or any other material default, as defined by an agreement between the LECs, and in the event such termination of service would effectively result in the disconnection of the defaulting LEC's customers from the local telecommunications network without a customer notice, consistent with rule 4901:1-6-16 of the Administrative Code, the aggrieved LEC shall be required to notify the commission at least fourteen calendar days in advance of the date it intends to terminate the other LECs' access. Such notice shall be made by e-mail, facsimile, overnight mail, or hand delivery to the defaulting LEC and to the director of the service monitoring and enforcement department, the chief of the telecommunications section of the utilities department, and the chief of the telecommunications section of the legal department.

(B) If it is determined by the commission, that further investigation is warranted or that immediate termination may not be in the public interest, the commission or an attorney examiner may direct the aggrieved LEC to stay the termination for further investigation. 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 service(s) from the aggrieved LEC's network.