

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application and Petition	:	
of Nova Telephone Company to Maintain its	:	
Rural Exemption Pursuant to 47 U.S.C.	:	Case No. 09-1899-TP-UNC
Section 251(f)(1) and Ohio Admin. Code	:	
4901:1-7-04 and to Suspend or Modify the	:	
Application of the Requirement of 47 U.S.C.	:	
Section 251(b) and (c) Pursuant to 47 U.S.C.	:	
Section 251(f)(2) and Ohio Admin. Code	:	
4901:1-7-05.	:	

**REPLY OF ARMSTRONG TELECOMMUNICATIONS TO RESPONSE OF THE NOVA
TELEPHONE COMPANY TO AUGUST 11, 2011 COMMENTS OF ARMSTRONG
TELECOMMUNICATIONS, INC.**

INTRODUCTION

There are two main problems with the Response of Nova Telephone Company ("Nova Response") to Armstrong Telecommunications, Inc.'s ("Armstrong") Comments in this matter. First, Nova fails to provide legal support of any kind for its position that the Commission's April 6, 2010 Finding and Order should remain in effect in light of the FCC Declaratory Ruling discussed in detail in Armstrong's Comments, adopting Armstrong's initial legal position in this matter. (August 11, 2011 Comments of Armstrong Communications 4-7) (hereinafter "Armstrong Comments"). Second, in direct contravention of the Commission's April 6, 2010 Finding and Order in this matter, Nova states for the first time that it "may still require some additional time beyond April 2012 in order to position itself to be able to compete with Armstrong." (Nova Response 4, 7.)

In its Comments filed August 11, 2011, Armstrong demonstrated that the legal basis underlying the Commission's April 6, 2010 Finding and Order in this matter has been contradicted by a recent FCC Ruling. (Armstrong Comments 4-7.) Specifically,

Armstrong quoted and cited the portions of the FCC Ruling in which the FCC unequivocally stated that a rural exemption under 47 U.S.C. Section 251(c) does not negate an incumbent Local Exchange Carrier's ("LEC") interconnection responsibilities under Sections 251(a) and (b) of the same statute. (Id. at 4-6.) As a result, Armstrong argues, Nova is required to honor Armstrong's request for interconnection under 47 U.S.C. Sections 251(a) and (b), even if Nova's rural exemption remains in effect under the Commission's April 6, 2010 Finding and Order. (Id. at 6-7.)

It is difficult to glean from Nova's Response the company's exact position on the issues raised in Armstrong's Comments. Nova admits that the FCC held that LECs are obligated to fulfill the interconnection duties of Sections 251(a) and (b) of the Act, even if the LEC has a rural exemption from the obligation set forth in Section 251(c). (Nova Response 5.) Then, however, Nova discusses pre-emption and the compulsory arbitration procedure of Section 252. (Id.) It appears that Nova is arguing that instead of revising its April 6, 2010 Finding and Order, as Armstrong has requested, the Commission should instead adjudicate Armstrong's concerns by way of a new bona fide request for interconnection, followed by mediation. (Id. at 6.)

Nova's suggestion that Armstrong make a new bona fide request for interconnection is nonsensical. Armstrong already made such a request in this proceeding, arguing that Nova had a duty to interconnect in spite of a rural exemption. (Initial Comments of Armstrong 6.) The Commission held otherwise in its April 6, 2010 Order, and the FCC has now disagreed with the Commission's interpretation. Nonetheless, Nova suggests that Armstrong must file a new bona fide request for interconnection, then request that the Commission mediate the dispute under 47 U.S.C.

§ 252(a)(2)—all of which would bring the parties back to exactly where they stand right now. The FCC Ruling makes clear that the legal basis for the Commission’s April 6, 2010 Finding and Order is inconsistent with federal law. Armstrong should not be required to undertake the effort and expense of a new bona fide request for interconnection, when the FCC Ruling has stated that Armstrong’s initial request for interconnection should have been granted in the first instance. Such a finding would place the burden of enforcing the law on the party whose interpretation of that law has now been conclusively found correct.

Nova further states only that Armstrong did not file an application for rehearing from the April 6, 2010 Finding and Order, that Nova has complied with that Order, and that Armstrong may submit a new bona fide request for interconnection to Nova Telephone Company. (Nova Response 6-7.) Nova does not even attempt to explain why the absence of an application for rehearing should impact the Commission’s decision in this matter. Filing an application for rehearing is a prerequisite for appeal to a court of law, (R.C. 4903.10 and O.A.C. 4901-1-35), but it has no bearing on whether a decision of the Commission should be revisited in light of a new and relevant federal ruling. The FCC Ruling did not occur between the date of the Commission’s April 6, 2010 Order in this case and the date on which the Commission would have issued a decision on an application for rehearing. In other words, even if Armstrong had chosen to file an application for rehearing, a denial of that application would have been overruled by the FCC just as the Commission’s April 6, 2010 Finding and Order has been overruled.

Similarly, Nova makes no argument as to why it matters if Nova has complied with the Commission's April 6, 2010 Finding and Order. Whether Nova has complied with the Order or not, the FCC Ruling directly contradicts the legal basis for the Finding and Order in the first instance. A party's compliance with an Order is no reason to uphold the Order if the legal basis for the Order is not sound and is inconsistent with federal law.

In addition to the fact that Nova provides no legal support for its position, Nova indicates for the first time in its Response that it may need additional time beyond April 2012 to position itself in order to compete with Armstrong. (Nova Response 4, 7.) A responsive Comment is not the proper mechanism by which to request extension of a rural exemption, a fact of which Nova is aware, because Nova has already filed in this matter an application for extension. Further, Nova's statement about needing more time to comply with the Commission's Order directly contradicts its statement that it has "complied with the April 6, 2010 Finding and Order." (Nova Response 6.) The command of the Commission's April 6, 2010 Finding and Order is abundantly clear:

During this two-year time, the Commission emphasizes that it is imperative that Nova makes significant progress in order to prepare for imminent competition in its service area. . . . After two years, Nova's rural exemption will be terminated. (April 6, 2010 Finding and Order 11, Finding 19.)

To ensure the point would not be lost on the parties, the Commission repeated it:

ORDERED, That the application and petition filed by Nova is approved for two years from the effective date of this finding and order. During this two-year time, the Commission emphasizes that it is imperative that Nova make progress in preparation for competition in its traditional service territories, as discussed in finding (19). (April 6, 2010 Finding and Order 11.)

The Commission did not say that Nova's rural exemption would be terminated unless Nova needs additional time to prepare for competition. It said that after two years, Nova's exemption would be terminated. In spite of the Commission's clear command, Nova now requests that the Commission do what it apparently believes would be improper for the Commission to do upon Armstrong's request: to revise its April 6, 2010 Order. The revision requested by Armstrong is supported by recent legal authority of the FCC Ruling. The revision requested by Nova is not supported at all.

Armstrong's request that the Commission revise its April 6, 2010 Finding and Order in light of the recent FCC Ruling is therefore appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing REPLY OF ARMSTRONG TELECOMMUNICATIONS TO RESPONSE OF THE NOVA TELEPHONE COMPANY TO AUGUST 11, 2011 COMMENTS OF ARMSTRONG TELECOMMUNICATIONS, INC. has been served by electronic mail, this 21st day of September, 2011, upon the parties listed below:

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Summary: Reply of Armstrong Telecommunications to Response of the Nova Telephone Company to August 11, 2011 Comments of Armstrong Telecommunications, Inc. electronically filed by Mark Yurick on behalf of Armstrong Telecommunications, Inc.