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October 2, 2000

Daisy Crockron, Chief of Docketing
Division
PUBLIC UTILITIES COMMISSION OF OHIO
180 East Broad Street
Columbus, Ohio 43215

Re: In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines, PUCO Case No. 99-998-TP-COI
In the Matter of the Commission Review of The Regulatory Framework for Competitive Telecommunication Services under Chapter 4927, Revised Code, Case No. 99-563-TP-COI

Dear Ms. Crockron:

Enclosed for filing are an original and fifteen (15) copies of the Initial Comments of The Ohio Telecommunications Industry Association Concerning Staff Preliminary Proposal of August 24, 2000, to be filed in connection with the above-referenced matter.

Thank you for your assistance. If you have any questions, please call.

Very truly yours,

Thomas E. Lodge

TEL/tjh

cc: Ms. Mary Ellen Stallings
PUCO - Telecommunications Division (Via Hand-Delivery)
Parties of Record

Enclosures

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission Ordered Investigation of the Existing Local Exchange Competition Guidelines.	)))	Case No. 99-998-TP-COI
In the Matter of the Commission Review of The Regulatory Framework for Competitive Telecommunication Services under Chapter 4927, Revised Code.	))))	Case No. 99-563-TP-COI

INITIAL COMMENTS OF
THE OHIO TELECOMMUNICATIONS INDUSTRY ASSOCIATION
CONCERNING STAFF PRELIMINARY PROPOSAL OF AUGUST 24, 2000

THE OHIO TELECOMMUNICATIONS INDUSTRY ASSOCIATION ("OTIA"), on behalf of its membership[1] and as called for by the Commission's Entries of August 24, 2000 and September 8, 2000, hereby provides its Initial Comments concerning the Preliminary Proposal For Comprehensive Telecommunications Rule Reform From The Staff Of The Public Utilities Commission Of Ohio ("the "Preliminary Proposal"). For convenience and clarity, these Initial Comments will follow the outline of the Preliminary Proposal as well.

[1] Several members of the OTIA have can be expected to submit individual Initial Comments in separate filings. These Initial Comments constitute the position of the OTIA as a whole.

1. Introduction and Executive Summary

The OTIA agrees with the need to reconsider and rewrite the rules in place for competitive carriers. As noted in its Initial Comments of November 30, 1999 in Case No. 99-563, as well as its Initial Comments of December 17, 1999 in Case No. 99-998, the OTIA supports alignment of the Commission's rules with the industry's competitive development -- regulation should continue to recede as competition continues to expand.

In its Initial Comments in Case No. 99-998, the OTIA proposed four principles to which it still adheres:

- The Commission now can, indeed now must, make a studied effort either to conform the Local Competition Guidelines to their federal counterparts, or to repeal the Local Competition Guidelines altogether in favor of their federal counterparts.
- The new rules should eliminate or minimize bias in favor of new entrants.
- The new rules should eliminate provisions that have been fulfilled, or that are otherwise anachronistic.
- The new rules should recognize the distinguishing circumstances and characteristics of small and mid-size telephone companies.

In its Initial Comments in Case No 99-563, the OTIA likewise stated several principles to which it still adheres:

- The new rules should turn regulatory obligation upon the nature of the service provided, rather than on the provider of the service.
- The market, rather than regulation, should be allowed to determine service obligations whenever feasible.
- No class of carriers should receive differential treatment without adequate justification. Specifically,
    - affiliate rules should apply equally to all carriers;

- cost studies should be required, if at all, on a nondiscriminatory basis;
- contract and tariff rules should apply equally to all carriers;
- accounting treatment should be flexible and allow all carriers to move toward a system applicable to businesses generally, rather than to utilities alone;
- enforcement mechanisms must be carefully established within the bounds of Commission jurisdiction, and carefully executed to minimize regulatory influence in competitive circumstances.

The following comments concerning the Preliminary Proposal are intended to further these principles.

2. Service Definitions

Necessarily, the definitions of the Preliminary Proposal are tied to the substance of the Preliminary Proposal itself, and the OTIA's comments thereon are no different. If and to the extent that acceptance of the OTIA's substantive comments warrants amendment of these definitions, they should be so amended.

2.1. Proposed Definition of Basic Local Exchange Service Redefined

The OTIA concurs in the definition of Basic Local Exchange Service set out in the Preliminary Proposal. That definition correctly recognizes the competitive nature of data and video services, and properly excludes such services from the "essential" category established in the Preliminary Proposal. While the OTIA agrees with the approach of identifying the respective remaining elements of essential basic local exchange service, the OTIA understands that charges may, and may continue to be, assessed for each such element.

2.1.1. Local and Toll Service Definitions

The OTIA concurs in the definitions of local and toll service set out in the Preliminary Proposal.

2.1.2. Minimum Local Service Area Definition

The OTIA has no objection to the definition of "minimum local service area" set out in the Preliminary Proposal, though it is not apparently used as such. The OTIA agrees that the definition serves adequately to define the basic service obligation in geographic terms.

2.1.3 Usage

2. Service Definitions

The employment of this term in the Preliminary Proposal itself is obscure, but OTIA members are willing to accept a requirement of flat-rate service as part of essential basic local exchange service.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

The OTIA agrees with the overall approach of the Preliminary Proposal to segregate services into essential and nonessential tiers, and agrees with the establishment of limited, essential "Tier 1" services. However, the OTIA believes that the rules resulting from the Preliminary Proposal should combine Tier 2 and Tier 3 into a single "Non-basic" Tier. As described in more detail below, such a convergence of Tiers 2 and 3 will simplify the regulatory environment meaningfully, but can be engineered to preserve the distinguishing obligations of ILECs.

Additionally, the OTIA vigorously disagrees with the Preliminary Proposal's distinction between "affiliated" CLECs and "unaffiliated" CLECs. Many mechanisms exist to police potential anticompetitive behavior of market participants; an artificial distinction among carriers based upon their affiliation with others is an improper method of doing so. As the Staff originally proposed in Case No. 99-563, regulation should be based on the service provided, not on the provider of the service.

3.1. Regulatory Framework Summary

Initially, the OTIA notes that the Preliminary Proposal addresses treatment of Tier 1, Tier 2 and Tier 3 under the Minimum Telephone Service Standards ("MTSS"), and this treatment warrants comment. Tier 2 and 3 services should not be included under the MTSS umbrella, because MTSS, by definition, are required only to ensure adequate service. Because Tier 2 is defined as "non-essential" and Tier 3 is defined as "discretionary and/or subject to competitive market pressures," no "minimum" standards are necessary. In fact, in a competitive market, the

customer (not the MTSS) should determine if the price, billing format, promotional presentations, and service or support of the product are satisfactory and meet consumer needs. Imposition of the MTSS unnecessarily would actually impede competitive choice.

3.1.1. Tier 1

The OTIA generally agrees with and supports the limited definition of Tier 1 services. However, as noted below, the Commission must not accept the unworkable suggestion that a customer's failure to receive any element of the definition constitutes an "out-of-service" condition.

3.1.2. Tier 2

As noted, the OTIA believes that the "Tier 2" classification should be eliminated and combined with Tier 3 to create a single "non-basic" Tier. For CLECs, that "non-basic" Tier would include the essential basic local exchange service identified to ILECs for Tier 1; for ILECs, the "non-basic" tier would include all services other than the essential basic local exchange service.

By so defining the regulatory landscape, the Commission can shelter the appropriate services and customers for them – specifically the essential services encompassed within Tier 1 – while allowing the marketplace to regulate the remaining offerings of the industry.

3.1.3. Tier 3

The OTIA agrees with the definition and treatment of Tier 3 Services, except that cost studies should be treated in a nondiscriminatory fashion. Neither the Preliminary Proposal nor basic logic explains why a competitive service should be subject to different regulatory requirements depending on the vendor. Either all carriers should have to provide cost studies as

a matter of course (a result which the Commission plainly should reject), or all should have to provide on demand, or none should have to provide except in litigation. The OTIA advocates the final option, which would place cost studies in their proper place: as tools in the resolution of disputes, not as day-to-day regulatory obligations.

3.2. Certification

The OTIA supports the unification of certification requirements. However, the OTIA questions the Preliminary Proposal's requirement for ILECs to maintain separate CLEC affiliates. While such an approach may fit well for some ILECs, it represents discrimination and additional overhead that may not be appropriate for others. The only stated rationale for such a separation requirement is the assertion of monopoly power, which in many circumstances simply does not exist.[2] Accordingly, the rules resulting from the Preliminary Proposal should allow greater flexibility in the deployment of affiliates.

3.2.1. Certification Boundaries

The OTIA concurs in this aspect of the Preliminary Proposal, and agrees that statewide certification should be available as a matter of course.

3.2.2. Residential Service

The OTIA concurs in this aspect of the Preliminary Proposal. The choice to offer residential service should be determined by market conditions, not regulatory imperative.

[2] For example, when a small independent ILEC seeks to compete in neighboring territory of a large ILEC, the small company is far more like an "unaffiliated CLEC" than a large ILEC competitor.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

3.2.3. Certification Process

The OTIA concurs in this aspect of the Preliminary Proposal. The current 60-day automatic approval process should be retained.

3.2.4. Suspensions

The OTIA concurs in this aspect of the Preliminary Proposal. However, to clarify the process apparently contemplated by the Staff, the resulting Rule should be drafted to allow the applicant company to complete information requests beyond the initial 30-day response time, perhaps upon permission of the Legal Department, while still allowing automatic approval of the underlying application at the end of the initial 90-day extension.

3.2.5. Partial Suspensions

This aspect of the Preliminary Proposal is apparently intended to engender certainty in the certification process by requiring a "complete" application – including a final tariff – before certification is granted. While the OTIA agrees with the goal of certainty, the OTIA submits that to require "an approved, complete, tariff " prior to certification is inappropriate. As the current practice recognizes, certification is prerequisite to a wide variety of CLEC requirements, including financing, NXX acquisition and in some cases interconnection. While these activities take place, the market – and specifically appropriate pricing -- can change radically. To require the development of pricing at the onset will almost-certainly be premature (and competitively dangerous), and for some carriers will cause market entry to stall altogether. While any carrier could file "placeholder" rates subject to adjustment at a later date, such a procedure would be cumbersome, bureaucratic and unnecessary.

Accordingly, the resulting rule should allow certification upon the approval of all requirements, including a tariff, but excepting the establishment of prices.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

3.2.6. Essential Voice Service

The OTIA concurs in this aspect of the Preliminary Proposal. To require essential basic local exchange service as a baseline offering is logical and appropriate.

3.2.7. Basic Local Exchange Service Provider of Last Resort

The OTIA submits that this aspect of the Preliminary Proposal is unnecessary. Under current law, an ILEC is obligated to serve its service area unless and until excused by the Commission. Revised Code §§4905.21, 4905.22. Accordingly, unless the Commission expects that "carrier of last resort" will have some other meaning or use, this definition and provision are unnecessary. If such alternative usage of the term is expected, it should be disclosed before rulemaking takes place.

3.2.8. Service Territory

The OTIA generally concurs in this aspect of the Preliminary Proposal. However, the OTIA continues to believe that all carriers should have the same rights to expand or contract their service territory, subject to carrier-of-last-resort rules. Neither the Preliminary Proposal nor any comments to date have justified differential treatment of ILECs and CLECs in this respect. Thus, this aspect of the Preliminary Proposal should eliminate any distinction between CLECs and ILECs in that regard.

Additionally, the OTIA also notes that several member companies continue to maintain a rural exemption, though the Preliminary Proposal uses language suggesting that such exemptions do not or will not exist. The resulting rule should acknowledge the existence of those exemptions within the boundaries of federal law.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

3.2.9. Requirement to Serve within 24 Months

The OTIA continues to believe that 24-month buildout requirement should be eliminated entirely, and therefore the OTIA concurs in this aspect of the Preliminary Proposal.

3.2.10. Financing Approvals for CLECs

This aspect of the Preliminary Proposal suggests elimination of financing-approval requirements for CLECs. The OTIA agrees, but submits the Preliminary Proposal does not go far enough. As a practical matter (and with some exceptions), financing-approval authority is now exerted only over CLECs and small ILECs. By and large, larger companies obtain financing through their holding-company resources, which are properly beyond the regulatory authority of this Commission. With this Preliminary Proposal, then, the only remaining financing authority would be exerted against small ILECs, which are the entities least able to afford the regulatory lag, overhead and intrusion. Accordingly, the OTIA submits that financing authority should be abandoned altogether for the telecommunications industry, as authorized by Revised Code §§4927.03 and 4927.04(B).

3.3. Cost Concern Differences Between CLECs and ILECs

This area of the Preliminary Proposal deals with cost studies and requirements for their submission, and presents one of the principal features with which the OTIA objects. Requirements for cost studies under the Preliminary Proposal are both too plentiful and too specific to ILECs, and the OTIA submits the Staff's recommendations should be rejected.

The OTIA disagrees with the Staff's conclusion that "that there are public policy reasons (beyond the statutory prohibition) to distinguish between ILECs and unaffiliated CLECs on cost-of-service issues." The OTIA submits that cost-study requirements, if they are to exist at all,

should be the same for ILECs, for affiliated CLECs, and for unaffiliated CLECs. Even if one accepts the Staff's belief that ILECs retain significant market power,[3] that does not justify the excessive filing requirements here proposed.

For this reason, the OTIA also disagrees with the Staff's conclusion that the retail structure of the Preliminary Proposal "gives the ILECs and their affiliates broad pricing flexibilities and market response capabilities, but maintains the necessary checks and balances to assure that essential services do not subsidize non-essential services and to assure the continued development of the competitive market." To the contrary, the OTIA submits that the ILECs and their affiliates are hamstrung by the Preliminary Proposal, and are subjected to far more regulatory scrutiny than conditions warrant. The resulting rules should establish parity among ILECs, affiliated CLECs and unaffiliated CLECs on cost-of-service issues generally, and specifically on any requirements to file cost studies.

3.4. Retail Service Requirements

Generally, this aspect of the Preliminary Proposal adheres to the concept of regulating services as opposed to service providers. The OTIA agrees with that approach.

3.4.1. End User Tariffs

The OTIA concurs in this aspect of the Preliminary Proposal, which sorts services according to their essential nature and competitive attributes. As noted, however, the OTIA advocates the combination of Tier 2 and Tier 3 into a single "non-basic" Tier.

[3] As noted, that may or may not be true.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

3.4.1.1. Non-Specific Service Charges

The OTIA concurs in this aspect of the Preliminary Proposal. These regulated services should be tariffed.

3.4.1.2.Tier 1 Definition

The OTIA generally concurs in this aspect of the Preliminary Proposal, and agrees with the elements of "essential basic local exchange service" identified here.

3.4.1.2.1. Tier 1 Regulatory Framework

The OTIA generally concurs in this aspect of the Preliminary Proposal. However, the OTIA disagrees with the suggestion that "the loss of any component of basic local exchange service should be equivalent to out-of-service as it regards the MTSS and applicable customer credits." Several of the essential components described in this definition cannot be remedied promptly if they are lost, such as an error in a directory. Others may be beyond the direct control of the serving ILEC, such as 911 PSAPs, and therefore cannot be restored directly. Under these circumstances, holding the ILEC to an "out-of-service" standard for the duration of the problem is impossible and unfair.

The OTIA does not suggest that these quality-of-service issues are irrelevant. However, they should not be addressed in this docket, which by necessity is directed to larger questions. The treatment of "Tier 1" services under the MTSS should be addressed in the MTSS docket – where its meaning can be determined in the appropriate context – not in this one.

3.4.1.3.Tier 2 Definition

The OTIA believes that Tier 2 is unnecessary. In the current environment, essential basic local exchange service is the only service that retains a "high level of public policy interest."

That service may be required of ILECs as part of Tier 1, and may be required of CLECs as part of a combined "non-basic" tier.

The only stated purpose for a "Tier 2" classification is that these services "nevertheless retain such a high level of public policy interest that Staff cannot, at this time, recommend the same reduced regulatory treatment as we are proposing for Tier 3 services." The OTIA disagrees with that conclusion. Plainly, demand exists for all of the services identified for "Tier 2;" thus, no such classification is necessary to ensure their availability. Further, as noted in the Preliminary Proposal itself, the principle attribute of "Tier 2" regulation (other than tariff requirements) is up-front cost justification. The OTIA continues to assert that such cost justification, if it is to be required at all, should only be necessary when a price is questioned – a theory that applies equally to Tier 2 and Tier 3 services.

In short, while the OTIA agrees with the maintenance of a "sacrosanct" Tier 1 classification, all remaining services should be treated under a single "non-basic" tier.

3.4.1.3.1. Tier 2 Services

If Tier 2 services are to exist, the OTIA submits that the resulting rule should eliminate all distinctions between ILECs and CLECs in this area, except to require CLECs to provide essential basic local exchange service as part of Tier 2. Otherwise, the resulting rule should not encompass "ILEC-only Tier 2 Services" or "CLEC Tier 2 Services", but should instead address Tier 2 Services generally.

3.4.1.3.2. ILEC only Tier 2 Services

Again, the OTIA supports elimination of Tier 2. However, the following comments address the Preliminary Proposal's specific recommendations.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

Basic caller identification (number delivery only service):

The OTIA disagrees with treatment of Caller ID as a service affected with "public policy" concerns. Caller ID is popular and useful; it is not essential or fundamental. It should be treated in Tier 3.

Call Trace (*57):

If Tier 2 is to exist, the OTIA has no objection to placement of Call Trace within it. However, the OTIA submits that Call Trace would certainly be offered, and would be priced lawfully, if placed in a single "non-basic" tier.

Centrex Access Line:

The OTIA submits that Centrex access lines are competitive and should be subject to Tier 3 regulation. As the OTIA has demonstrated in other forums, and as the Commission itself accepted long ago, Centrex service competes directly with terminal equipment, and is marketed and priced accordingly. Centrex is not a "Tier 2" service.

Private Branch Exchange (PBX) trunks:

For like reasons, the OTIA submits that PBX trunks are competitive and should be subject to Tier 3 regulation. For business customers that employ a PBX, many different competitive access options exist.

Second and third basic local exchange service lines:

The OTIA vigorously objects to this classification. Only the first access lines to the home or business is "essential." Every additional line is subject to competition in some form. The OTIA disagrees strenuously with the Staff's conclusion that "the nature of many second and third lines called for more regulatory control." Those lines, for the uses described by the Staff, can be obtained from multiple competitive sources.

3.4.1.3.3. CLEC Tier 2 Services

As noted above, if Tier 2 is to exist, CLECs and ILECs should provide the same services under the same rules. Neither the Preliminary Proposal nor any comments received to date establish otherwise.

3.4.1.3.4. Tier 2 Regulatory Framework

If Tier 2 is to exist, the OTIA concurs in large measure with the regulatory treatment of the Preliminary Proposal. However, as noted above, the OTIA submits that no cost studies should be required in connection with routine Tier 2 filings. Further, the OTIA submits that restrictions on promotions, such as those proposed in this aspect of the Preliminary Proposal, are anticompetitive and unnecessary. Promotions should be limited only by trade regulation generally applicable to all businesses.

3.4.1.4.Tier 3 Definition

The OTIA concurs in this aspect of the Preliminary Proposal.

3.4.1.4.1. Tier 3 Regulatory Framework

The OTIA generally concurs in this aspect of the Preliminary Proposal with the following exceptions:

- The OTIA objects to any requirement for cost studies with respect to Tier 3 services. Cost issues should be determined, if at all, only when they are raised. They should not be the subject of anticipatory regulation.
- The OTIA also objects to any differing treatment of ILECs and CLECs with respect to Tier 3 services. These services are competitive, by definition. Competitors should be placed on equal footing.
- The OTIA also objects to any limitations upon promotions of Tier 3 services, except those limitations generally applicable to competitive businesses.

3. IXC, CLEC, and Alt. Reg. ILEC Retail Service Rules

3.4.1.5.Alternate Operator Services and Inmate services

The OTIA concurs in this aspect of the Preliminary Proposal. These services do not belong in this docket.

3.4.1.6.Filing Procedures and Registration Form

The OTIA concurs in this aspect of the Preliminary Proposal. A single simple form is appropriate.

3.4.1.7.Tariff Application Suspensions

The OTIA concurs in this aspect of the Preliminary Proposal. However, to clarify the process apparently contemplated by the Staff, the resulting Rule should be drafted to allow the applicant company to complete information requests beyond the initial 30-day response time, perhaps upon permission of the Legal Department, while still allowing automatic approval of the underlying application at the end of the initial 90-day extension.

3.4.2. End User Contracts

This aspect of the Preliminary Proposal unnecessarily expands the obligation to file contracts and cost studies, and the OTIA objects. Often "ICB" contracts are developed to meet customer needs, and filing of such contracts, in and of itself, is not objectionable. However, the Preliminary Proposal appears to assume that cost justification for an "ICB" contract is always necessary and warranted, when in fact it is neither. Cost studies should not be required for all "new, unique or untariffed services."

Furthermore, as written, the Preliminary Proposal appears to require the filing of a contract even when the only "contract" is the customer's choice among various tariffed options (for example, the selection of a three-year term under tariff rather than month-to-month pricing).

Filing of such selections just adds unnecessary paperwork, and is not required by the statute. The resulting rule should be drafted to excuse such filings. Finally, the Preliminary Proposal requires submission of contracts within 7 days – an interval that is unrealistically short. Resulting rules should continue existing requirements.

3.4.3. Fresh Look

The OTIA concurs in this aspect of the Preliminary Proposal. "Fresh look" can and should be eliminated.

3.4.4. Toll Presubscription

The OTIA generally concurs in this aspect of the Preliminary Proposal. However, the OTIA notes that some of its members currently employ a PIC-change charge below $5; accordingly, the language of this resulting rule should direct a charge of "no more than" $5.

4. Interconnection and Carrier-to-Carrier Rules

As suggested in their Initial Comments in Case No. 99-998, the OTIA agrees that the local competition rules should be reworked. However, as noted above, the OTIA also believes that the new rules should provide equal treatment of ILECs, affiliated CLECs and unaffiliated CLECs. The Staff's Preliminary Proposal unduly favors unaffiliated CLECs, and the OTIA's comments are directed to these disparities.

4.1. Interconnection Section

4.1.1. Request for Interconnection

The OTIA submits that any regulation of requests for interconnection should simply adopt federal rules by reference; state-specific rules, as the Preliminary Proposal observes, are problematic for national carriers. Likewise, the Preliminary Proposal's suggestions concerning continuing service of such requests on the Staff will remain unrealistic.

4.1.2. Section 252 Agreement Approval Process

The OTIA generally concurs in this aspect of the Preliminary Proposal, and agrees that a more automatic and carrier-friendly approach will be welcome. However, the fines threatened by this aspect of the Preliminary Proposal raise more questions than they resolve. Specifically, the Preliminary Proposal is quite unclear concerning which party to a §252(i) agreement would be subject to fines, and the jurisdictional basis for the Staff's calculation is quite suspect. The resulting rules should omit any reference to such threats.

4. Interconnection and Carrier-to-Carrier Rules

4.1.3. Amendments to Interconnection Agreements

The OTIA concurs in this aspect of the Preliminary Proposal. Automatic treatment of amendments is altogether appropriate.

4.1.4. Application Fees

4.1.4.1.Request for Interconnection Application Fees

4.1.4.2.Bona Fide Request Application Fees

The OTIA generally concurs in this aspect of the Preliminary Proposal, and agrees application fees can properly recoup real expenses, and are both reasonable and lawful. However, the OTIA questions the need for extended-pay provisions for acceptable fees; if a carrier requires extended payment for such nominal fees, its financial stability must surely be questioned. Accordingly, the resulting rules should omit any provision for any such extended payment; such a program would surely create more overhead than benefit for all concerned.

4.1.5. Collocation

The OTIA concurs in this aspect of the Preliminary Proposal. Federal rules on this topic completely and effectively address the issues, and state-specific rules are unnecessary. Federal rules, as they are promulgated, modified or applied to any individual carrier, should apply identically in the state jurisdiction.

4.1.6. Mediation and Arbitration

The OTIA concurs in this aspect of the Preliminary Proposal. The Commission's existing rules on this topic are sufficient.

4. Interconnection and Carrier-to-Carrier Rules

4.1.7. Compensation for the Transport and termination of Telecommunications Traffic

The OTIA has appeared in Case No. 99-941-TP-ARB, and its positions concerning reciprocal compensation will be advanced more fully in that case. Accordingly, the OTIA concurs in the recommendation of the Preliminary Proposal to defer resolution of these issues to that case.

4.1.7.1.Internet Service Provider (ISP) Compensation

The OTIA concurs in this aspect of the Preliminary Proposal. Issues relating to the proper treatment of ISP compensation should be determined in the proceedings associated with Case No. 99-941-TP-ARB.

4.1.7.2.Transit Traffic Compensation

The OTIA concurs in this aspect of the Preliminary Proposal, in that if a LEC is to be required to carry transit traffic, the LEC must be compensated for its service. The OTIA also agrees that until such time as the Commission approves carrier-specific transit traffic compensation TELRIC rates, an intermediate carrier should be compensated at its tariffed switched-access rates. The OTIA notes, however, that this aspect of the Preliminary Proposal fails adequately to resolve the matter, because it fails to identify how an intermediate carrier is to identify the payor of such traffic; in many instances, carriers discover incoming transit traffic of unknown origin, and lack the ability to render an appropriate bill. That issue will require further proceedings for its resolution.

4.1.7.3.Transport and Termination for Toll Traffic

The OTIA concurs in this aspect of the Preliminary Proposal. These issues should be determined in Case No. 00-127-TP-COI.

4. Interconnection and Carrier-to-Carrier Rules

4.2. Carrier-to-Carrier Tariffs

The OTIA opposes any requirement for carrier-to-carrier tariffs. Currently, all carriers are required to permit resale of their services, and most are required to interconnect pursuant to 47 U.S.C. §252. Larger carriers have already entered into their second generation of such agreements, all of which are subject to adoption under 47 U.S.C. §252(i). At this point, any obligations to file carrier-to-carrier tariffs are either duplicative of §252(i) obligations or a waste of resources or both.

4.2.1. Unbundled Network Elements Interconnection and Compensation Tariffs

The OTIA vigorously disagrees with the Preliminary Proposal's requirement for an unbundled network element (UNE), interconnection and compensation carrier-to-carrier tariff (UNE Tariff) or model interconnection agreement. Simply, the burden of producing and maintaining such a tariff far outweighs any benefit from it, particularly in light of §252(i). All terms and conditions that would be set forth in such a tariff are either already set forth in agreement subject to §252(i), or are a proper subject of negotiation, not unilateral announcement. Moreover, such a requirement would be particularly onerous for small and mid-sized telephone companies, which have neither the resources nor the data to comply, and which (for the most part) have not even received a request for the services in question. This provision of the Preliminary Proposal is misguided.

4.2.2. Resale Tariffs

The OTIA concurs in this aspect of the Preliminary Proposal. Resale tariffs are unnecessary and inappropriate. So are other carrier-to-carrier tariffs.

4. Interconnection and Carrier-to-Carrier Rules

4.3. Unbundled Network Elements Provisioning

The OTIA concurs in this aspect of the Preliminary Proposal. Current ongoing federal proceedings and litigation will determine these issues, and state-specific rules are inappropriate.

4.4. Resale Provisioning

The OTIA believes this aspect of the Preliminary Proposal is unnecessary. As the Preliminary Proposal itself observes, the issue is the subject to unambiguous federal law; thus, no Ohio rule is necessary. The OTIA also notes that rural carriers are not subject to precisely the same rules as other ILECs. Specifically, while rural carriers are required to offer services for resale, they are not required to establish or sell at a resale discount. 47 U.S.C. §252(f).

4.4.1. Resale of Retail Promotions

While the OTIA agrees with the Preliminary Proposal's recital of difficulties with current rules on resale of promotions, the OTIA submits that restrictions on promotions, such as those proposed in this aspect of the Preliminary Proposal, are anticompetitive and unnecessary, and eliminate a direct benefit to customers. Promotions should be limited only by trade regulation generally applicable to all businesses.

4.4.2. Resale of Contracts

The OTIA concurs in this aspect of the Preliminary Proposal, and has no objection to a rule requiring resale of contracts.

4.4.3. Resale of Lifeline

The OTIA concurs in this aspect of the Preliminary Proposal, which accurately states that resold lifeline services should involve no further discounts.

4.4.4. Resale Pricing

The OTIA generally concurs in this aspect of the Preliminary Proposal. The OTIA understands and assumes that the rules resulting from the Preliminary Proposal would not apply an avoided-cost discount to access services.

4.5. Rights-Of-Way

The OTIA believes that right-of-way issues are best determined by reference to applicable federal regulation (which addresses many of the obligations proposed in this aspect of the Preliminary Proposal), and are otherwise a matter of private contract (i.e. interconnect arrangements) or municipal contract (governing right-of-way occupation and construction). The assertion of jurisdiction by the Commission in this area will do little to resolve an already complex set of rules and laws, and may in fact inject additional mischief. For example, the Preliminary Proposal appears to advocate the assertion of jurisdiction over private contracts for lease of real estate, which could imperil or delay financing of unregulated third parties.

Despite the ominous tone of the Preliminary Proposal, the OTIA submits this is a set of issues that does not require regulatory intervention. Accordingly, this aspect of the Preliminary Proposal should be abandoned.

4.6. Local Number Portability (LNP)

The OTIA concurs in this aspect of the Preliminary Proposal. Local number portability does not require additional attention at this time.

4. Interconnection and Carrier-to-Carrier Rules

4.7. Discrimination, Affiliate Transactions, and Anti-competitive Behavior

4.7.1. Definitions

4.7.2. Violations

4.7.3. Code of Conduct

4.7.4. Nondiscrimination manual (NDM)

4.7.5. NDM Development Workshop

4.7.6. Affiliate Transaction Safeguards

4.7.7. Separate Accounting

4.7.8. Financial Arrangements

4.7.9. Staff Audits

This aspect of the Preliminary Proposal at once presents the most constructive suggestion of the Staff and the most dangerous.

Initially, the OTIA must express its enthusiastic concurrence in the Preliminary Proposal's suggestion to allow in-franchise competition by affiliated CLECs. That result will bring Ohio into line with the vast majority of other jurisdictions, will spur competition, and will eliminate one major roadblock to facilities-based alternative service.

On the other hand, the other proposals reflected here are inappropriate, unnecessary and downright dangerous. First, while they appear to evolve from the recently-adopted rules governing electric suppliers, the Commission must recognize that telephone companies and electric companies operate in radically different circumstances. Telephone companies were broken up many years ago, and therefore already operate under stringent separation and allocation rules. Indeed, an entire section of the Code of Federal Regulation is devoted to the topic. To track rules imposed in a separating environment, as opposed to one that is already separate, is improperly burdensome. Moreover, the scope and scale of the electric industry is

world's apart from the telephone industry; in capital assets alone, electric utilities are several orders of magnitude removed from telephone companies. The mechanisms developed to control the allocation of such vast resources have no place in the more scaled – in some instances very small – landscape of a telephone company.

While the OTIA agrees that the Commission must now replace the affiliate rules applicable since the mid-1980s, the Preliminary Proposal imposes needless paperwork and regulatory overhead. The Non-Discrimination Manual, in particular, imposes recordkeeping and management obligations for all companies that are simply unnecessary and that are plainly inappropriate in a competitive environment. The Commission already has the authority and ability to audit these issues if abuse is suspected. In conjunction with that authority, ongoing compliance with Part 64 of the CFR, and a demonstration of such compliance, should be more than sufficient for the Commission's oversight responsibilities.

Finally, the small telephone companies require much more latitude than this aspect of the Preliminary Proposal provides. Development and maintenance of a Non-Discrimination Manual would impose significant costs on small companies for no good reason.[4] Furthermore, the financing provisions of this aspect of the Preliminary Proposal will choke off capital for small carriers, which have no choice but to encumber telephone assets in connection with diversification efforts. In short, for small companies, this aspect of the Preliminary Proposal would force retrenchment to traditional operations and traditional financing at the very moment when creativity is essential to both.

[4] In contrast, the only electric company in this state that approach the scale of small telephone companies, the rural cooperatives, are not now subject to the electric deregulation rules.

4. *Interconnection and Carrier-to-Carrier Rules*

In short, these affiliate restrictions are unnecessary and needlessly burdensome, for all affected carriers, and should be eliminated from any resulting rules.

5. LOCAL EXCHANGE COMPETITION MEASUREMENTS

While the OTIA accepts the Commission's wish to monitor the competitive marketplace, including activities of competitors and incumbents, this aspect of the Preliminary Proposal places the Commission's burden firmly on the backs of the industry participants, and requires them to report, to disclose, and to respond, when they should instead be competing. Such regulatory overhead will suppress competition and render Ohio an unattractive market.

OTIA members were active participants in the Commission's former "TPM" project. That project required extensive efforts on the part of the industry. It engendered workshops and paperwork and waivers and confidential-treatment squabbles. In the end, however, and as the Preliminary Proposal notes, its usefulness, if any, expired. The OTIA is no more optimistic concerning this aspect of the Preliminary Proposal.

7. ENFORCEMENT, DISPUTE RESOLUTION, AND WAIVERS

6. ENFORCEMENT, DISPUTE RESOLUTION, AND WAIVERS

6.1. Enforcement

The OTIA recognizes the need of the Commission to enforce the rules resulting in this docket, and also recognizes that enforcement to date has been a burden for all concerned. The OTIA must stress, however, that the Commission is neither a police force nor a court of law. Enforcement mechanisms developed in this docket must adhere to the Commission's jurisdictional limitations.

The OTIA therefore has no objection to the maintenance of Better Business Bureau-type listing for consumers, though the OTIA is concerned that an "apples-to-apples" comparison is essential. Additionally, such a listing should parallel any applicable federal reporting requirements. By contrast, the Preliminary Proposal's suggestion for calculating forfeitures is unrealistic and overtly punitive. The ad terrorem nature of this aspect of the Preliminary Proposal merely underscores the Commission's limited jurisdiction to "fine" any carrier outside of the transportation arena. The OTIA submits that the Commission should not be rattling sabers for no good reason, and that the rules resulting from the Preliminary Proposal should avoid recital of such a theory advanced in this aspect of the Preliminary Proposal.

6.2. Alternative Dispute Resolution (ADR)

For similar reasons, the OTIA generally concurs in this aspect of the Preliminary Proposal, which avoids the punitive in favor of the collaborative. The resulting rules, however, must make clear that ADR applies only to carrier-to-carrier disputes. The OTIA also recommends that resulting rules should parallel the ADR procedures recently adopted and approved in connection with the Ameritech/SBC and the GTE/Bell Atlantic merger cases; to

impose different rules in this docket – even to achieve similar results – will create needless confusion.

6.3. Complaint Case Process with Interim Rulings

The OTIA generally concurs in this aspect of the Preliminary Proposal. At the workshop convened in this matter, Staff clarified that this aspect of the Preliminary Proposal extends only to carrier-to-carrier disputes. That conclusion should be clarified in the resulting rules.

6.4. Forbearance or Waivers

The OTIA concurs in this aspect of the Preliminary Proposal, which appears in any event to incorporate basic principles of administrative law.

7. UNIVERSAL SERVICE FUNDING

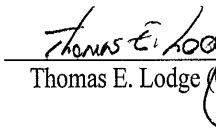
While the OTIA concurs in this aspect of the Preliminary Proposal, the OTIA urges the Commission to decide the issues of Case No. 97-632-TP-COI sooner rather than later. As noted by the small telephone companies in their separate comments, resolution of universal-service and access-charge issues is essential to the proper evaluation of the rules here considered; while the dockets may remain separate, the industry must remain whole.

8. CONCLUSION

The Ohio Telecommunications Industry Association appreciates the opportunity to voice its views in this docket, and submits that its recommendations should be adopted.

Respectfully submitted,

THE OHIO TELECOMMUNICATIONS
INDUSTRY ASSOCIATION

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed on the attached list, by ordinary U.S. Mail, postage prepaid, this 2nd day of October, 2000.

Thomas E. Lodge

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