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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Commission Ordered)
Investigation of the Existing Local Exchange) Case No. 99-998-TP-COI
Competition Guidelines.)

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APR 16 2001

In the Matter of the Commission Review of)
The Regulatory Framework for Competitive) Case No. 99-563-TP-COI
Telecommunication Services under Chapter)
4927, Revised Code.)

DOCKETING DIVISION
PUCO

**UPDATED COMMENTS OF
THE OHIO TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

THE OHIO TELECOMMUNICATIONS INDUSTRY ASSOCIATION ("OTIA"), on behalf of its membership¹ and as called for by the Commission's Entry of March 1, 2001, hereby provides its Updated Comments concerning the Proposal For Comprehensive Telecommunications Rule Reform From the Staff Of The Public Utilities Commission Of Ohio (the "Local Comp Rules").

1. Introduction

Throughout the long history of this docket,² the OTIA has urged a consistent view: regulation should continue to recede as competition continues to expand. The OTIA agrees with the need to reconsider and rewrite the rules in place for competitive carriers, and supports alignment of the Commission's rules with the industry's competitive development.

The Commission was, and remains, a leader in developing regulation for local competition. In fact, these Local Comp Rules are, in large measure, codification of the Local

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

² Initial Comments of November 30, 1999 in Case No. 99-563-TP-COI; Initial Comments of December 17, 1999 in Case No. 99-998-TP-COI; Initial Comments of October 2, 2000 Concerning Staff Local Comp Rules Of August 24, 2000 in the combined dockets.

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Competition Guidelines adopted in Case No. 95-845-TP-COI. Those 845 Guidelines were an immediate and necessary response to the enactment of the Telecommunications Act of 1996, at a time of dramatic uncertainty and a vacuum of federal regulation. Nonetheless, now that federal regulation is well developed, this Commission should accede to the unified system it represents, and to the certainty it provides the industry and customers.

First, attempts to establish state regulation in conflict with controlling federal rules would be unlawful. Second, given the ongoing regulatory and judicial review of that federal regulation, e.g. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499 (1996); Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd. 3696 (1999); Iowa Utils. Bd. v. FCC, 219 F.3d 744 (8th Cir. 2001), cert. granted, 121 S.Ct. 878 (U.S. 2001) (No. 00-587), efforts to establish parallel state regulation would be futile – each new FCC order or judicial decision will require amendment of Ohio’s rules, generating expensive, never-ending intrastate rule revision. Finally, many interconnection agreements that have been negotiated and/or arbitrated since 1996 (which address many of the same topics as federal rules) either guide parties in lieu of the proposed Local Comp Rules or provide opportunity for such guidance. In short, this Commission lacks a good reason to regulate issues subject to federal regulation, and has many reasons to avoid it.

The OTIA further continues to urge the following guiding principles:

- The Local Comp Rules should eliminate or minimize bias in favor of new entrants.
- The Local Comp 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.
- The Local Comp Rules should recognize the distinguishing circumstances and characteristics of small and mid-size telephone companies.

- 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 ILECs alone;
 - enforcement mechanisms must be carefully established within the bounds of Commission jurisdiction, and carefully executed to minimize regulatory influence in competitive circumstances.
- The Local Comp Rules should eliminate provisions that have been fulfilled, or that are otherwise anachronistic.

2. Markup of the Local Comp Rules

These Updated Comments provide comprehensive commentary on the Local Comp Rules.

In connection with its Reply Comments, and with the benefit of specific comments of its members and other industry participants, the OTIA will supply a complete markup of the Local Comp Rules (the "Markup"), which will include not only substantive recommendations, but also the technical and typographical recommendations of the OTIA for final Rules.

3. Comments

Initially, it may be noted that the OTIA loudly endorses the effort of the Commission in prescribing the Local Comp Rules, and supports many of the Local Comp Rules without modification. To spare bulk in these Comments, however, the OTIA does not discuss at length those Local Comp Rules with which it concurs. This omission should be construed only as an effort to avoid repetition and waste.

4901:1-6-01 Definitions

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-01 Definitions

Necessarily, the definitions of the Local Comp Rules are tied to the substance of the Local Comp Rules themselves, 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.

4901:1-6-01(A)(1) - Basic Local Exchange Service

This definition is apparently intended to be identical to the statutory definition of "basic local exchange service" that was recently enacted by the General Assembly. As proposed, it varies slightly. In its Markup, OTIA will propose identity.

4901:1-6-01(A)(9) - Minimum Local Service Area; 4901:1-6-01(A)(16) - Usage

The OTIA disagrees with the proposal to define "minimum local service area" so as to include all non-optional pilot EAS areas. The term "minimum local service area" is used primarily as an element of Rule 4901:1-6-01(A)(16), serving as the geographic scope for a requirement of flat-rate service. While OTIA members are willing to accept a requirement of flat-rate service as part of essential basic local exchange service, several existing pilots do not involve flat-rate service. This aspect of the Rule should be deleted.

4901:1-6-02 Applicability of retail service rules to providers of local and interexchange services.

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-02 Applicability of retail service rules to providers of local and interexchange services.

4901:1-6-02(A) – The first sentence of this Subsection states that Local Comp Rules (2) through (12) apply to all LECs, but to an ILEC only if the ILEC is operating subject a qualifying alternative regulation plan as defined in Ohio Administrative Code §4901:1-4. Given the topics covered by those Rules, however, that statement is quite confusing and apparently in error. The Rules in question, together with OTIA's comments concerning their applicability under the circumstances, are as follows:

Rule	Caption	Comment
4901:1-6-02	Applicability of retail service rules to providers of local and interexchange services.	Applicable whether or not Alt-Reg
4901:1-6-03	General provisions	Correctly applicable only if Alt-Reg
4901:1-6-04	Telephone company certification	Irrelevant to ILECs (already certified)
4901:1-6-05	Transfer of a certificate	Applicable whether or not Alt-Reg (paraphrase of R.C. §4905.402)
4901:1-6-06	Abandonment of a certificate	Appropriate whether or not Alt-Reg
4901:1-6-07	Telephone company procedures for notifying the commission of changes in operations.	Appropriate whether or not Alt-Reg (only minor modification of existing law)
4901:1-6-08	CMRS provisions	Irrelevant to ILECs (applicable to other providers)
4901:1-6-09	Retail service tariffing requirements	Correctly applicable only if Alt-Reg
4901:1-6-10	Tier 1	Correctly applicable only if Alt-Reg
4901:1-6-11	Tier 2	Correctly applicable only if Alt-Reg
4901:1-6-12	Alternative operator services and inmate services	Appropriate whether or not Alt-Reg

4901:1-6-02 Applicability of retail service rules to providers of local and interexchange services.

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

Otherwise, the OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-03 General provisions

4901:1-6-03 (F) - Competitive operations of incumbent LECs

The OTIA vigorously objects to the provisions of this Local Comp Rule, which perpetuates a 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. Furthermore, as the Staff originally proposed in Case No. 99-563-TP-COI, regulation should be based on the service provided, not on the provider of the service.

Otherwise, the OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-04 Telephone company certification

4901:1-6-04(B)(4)- Additional requirements to be submitted by telephone companies seeking certification as a provider of basic local exchange services.

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 Local Comp Rules nor any comments to date have justified differential treatment of ILECs and CLECs in this respect. Thus, this aspect of the Local Comp Rules should eliminate any distinction between CLECs and ILECs in that regard. The OTIA suggests that the language be changed to “Any provider of basic local exchange service is permitted to modify its service territory...”.

4901:1-6-04 (G) - Number Optimization

This proposed Rule appears to be out of place, as it relates indirectly to certification, the subject of Rule 4901:1-6-04.

Regardless of where this rule is placed, however, it should be noted that Subsection (G)(2) should refer only to the applicable FCC regulation.³

4901:1-6-04 (K)(2) - Basic local exchange service

The OTIA submits that this aspect of the Local Comp Rules 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.

³ Second Report And Order, Order On Reconsideration CC Docket No. 96- 98 and CC Docket No. 99- 200; Second Further Notice Of Proposed Rulemaking CC Docket No. 99- 200 (December 29, 2000)

4901:1-6-05 *Transfer of a certificate*

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-05 *Transfer of a certificate*

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-06 Abandonment of a certificate.

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-06 Abandonment of a certificate

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-07 Telephone company procedures for notifying the commission of changes in operations.

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-07 Telephone company procedures for notifying the commission of changes in operations.

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-08 CMRS provisions

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-08 CMRS provisions

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-09 Retail service tariffing requirements

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-09 Retail service tariffing requirements

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-10 Tier 1

4901:1-6-10(A)(1) – Tier 1 Definition

The OTIA generally agrees with and supports a limited definition of Tier 1 services, as well as a regulatory system applied to them. The Local Comp Rules, however, extend Tier 1 regulation to a broad group of services under the preemptory conclusion that they “nevertheless retain such a high level of public policy interest that these services still require regulatory oversight.” With respect to the following services, the OTIA disagrees:

- **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 2.
- **Call Trace (*57)** - The OTIA submits that Call Trace would certainly be offered, and would be priced lawfully, if placed in Tier 2.
- **Centrex Access Line** - The OTIA submits that Centrex access lines are competitive and should be subject to Tier 2 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 1” service.
- **Private Branch Exchange (PBX) trunks** - For like reasons, the OTIA submits that PBX trunks are competitive and should be subject to Tier 2 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 any suggestion that the nature of many second and third lines called for more regulatory control. All such additional lines can be obtained from multiple competitive sources.

Furthermore, 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.

4901:1-6-10(A)(2) - This subsection purports to permit additions to the list of “Basic Local Exchange Services” subject to Tier 1, and the OTIA vigorously objects. One principal aim of the system proposed in this docket and in Case No. 00-1532-TP-COI is (a) to establish the basic framework for “protected” service within the context of “Basic Local Exchange Service” and then (b) to encourage competitive innovation by excluding new services from that definition of “protected service.” If the Commission retains the right, without further process, to add to the list of “basic” services, then alternative regulation is for naught. Accordingly, this subsection must be omitted in its entirety.

4901:1-6-10(B) – Tier 1 Regulatory Framework

The OTIA objects to the distinction drawn in Subsections (B)(7) and (B)(8) between cost studies required of CLECs and cost studies required of ILECs. Both should be required only on demand. The OTIA also objects to the threat of sanctions stated in subsection (B)(12), which is beyond this Commission’s jurisdiction.

4901:1-6-10(B)(16) – The OTIA strongly disagrees with the Commission’s statement that the loss of any component of basic local exchange service or the loss of any other Tier 1 service is equivalent to out-of-service for MTSS purposes. An out-of-service situation occurs when the customers dial tone is rendered unavailable, not when a particular service contained in Tier 1 is lost to that customer. This proposed rule is overly broad and the Commission should strike it.

4901:1-6-10(C) – -- Tier 1 End User Contracts

This Subsection fails to make adequate provision for redaction of proprietary information in end-user contracts.

The OTIA has no other comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-11 Tier 2

4901:1-6-11(C) -- Tier 2 End User Contracts

This Subsection fails to make adequate provision for redaction of proprietary information in end-user contracts.

Otherwise, the OTIA generally agrees with the definition and treatment of Tier 2 Services. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-11(E)- Cost studies

Cost studies for Tier 2 services should be treated in a nondiscriminatory fashion. Neither the Local Comp Rules nor basic logic explains why a competitive service should be subject to different regulatory requirements depending on the provider. Either all carriers should have to provide cost studies as a matter of course (a result which the Commission should plainly 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.

4901:1-6-11(I) - MTSS applicability

Tier 2 services should not be included under the MTSS umbrella, because MTSS, by definition, are required only to ensure adequate service. Because Tier 1 incorporates all services that are either essential or are “not essential but nevertheless retain such a high level of public policy interest that these services still require regulatory oversight,” no “minimum” standards are necessary for the remaining services picked up in Tier 2. In fact, in a competitive market, the customer (not the MTSS) should determine if the price, billing format, promotional

4901:1-6-11 Tier 2

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presentations, and service or support of the product are satisfactory and meet consumer needs.

Imposition of the MTSS unnecessarily would actually impede competitive choice.

4901:1-6-12 Alternative operator services and inmate services Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-12 Alternative operator services and inmate services

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-13 Toll presubscription

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-13 Toll presubscription

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-14 Rural telephone company exemption for small ILECs

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-14 Rural telephone company exemption for small ILECs

This Rule addresses the treatment of rural telephone companies, a topic that is the subject of pervasive federal regulation. The OTIA submits the Commission should eliminate distinct Ohio regulation in favor of federal rules.

4901:1-6-15 Rural carrier suspensions/modifications

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-15 Rural carrier suspensions/modifications

This Rule addresses the treatment of rural telephone companies, a topic that is the subject of pervasive federal regulation. The OTIA submits the Commission should eliminate distinct Ohio regulation in favor of federal rules.

4901:1-6-16 Interconnection standards

This Rule seeks to prescribe interconnection standards and requirements, and covers a wide variety of subjects. In large measure, these are processes and standards employed by carriers in Ohio since prescription of the Local Competition Guidelines in Case No. 95-845-TP-COI, and the OTIA does not seek to change that result. The OTIA also notes that rural carriers are not subject to precisely the same rules as other ILECs. Significantly, however, the OTIA does urge the Commission to employ the same standards and procedures as have been developed by the FCC, and to employ only the federal rules when they are applicable. Otherwise, the Commission promotes inconsistency or forum shopping or both. Accordingly, this Rule should incorporate a statement acceding to applicable federal regulation over the same subject matter, whether such federal regulation now exists or is adopted in the future.

4901:1-6-16(C)(2) - Establishing interconnection agreements

This subsection establishes new timelines for response to bona fide requests, and would establish an impractically-short 5-day response time and 10-day window for a first meeting. The OTIA is aware of no dramatic issues that have arisen under the current system, and submits that adoption of this Rule would prompt only routine requests for waiver from it. If the subject matter is to be treated, the existing rule should be retained.

4901:1-6-16(C)(6) and (C)(7) - Establishing interconnection agreements

These Rules purport to establish “Most Favored Nations” obligations “whether in Ohio or in other jurisdictions” for all ILECs, including (a) ILECs with CLEC affiliates; (b) ILECs without CLEC affiliates; (c) ILECs that agreed to similar provisions at the federal level; and (d)

ILECs that have never agreed to such provisions. As a result, these provisions present a number of issues.

First, these provisions should not, and lawfully cannot, modify similar obligations that exist at the federal level for some carriers; they likewise should not modify the Ohio obligations of those same carriers that resulted from recent mergers. If an outstanding federal order or a recent order of this Commission addresses the same subject matter (as is the case for Ameritech and Verizon), then the Local Comp Rules should defer to them.

Second, for those carriers that did not agree to similar provisions (or who are not otherwise subject to them), the Local Comp Rules should not impose them universally. The “enterprise” rationale the underlies such provisions for carriers like SBC and Verizon simply does not fit smaller carriers, which may encounter radically different economics for their CLEC operations than for their incumbent operations. 47 U.S.C. §252(i) imposes the only appropriate obligations in this regard.

Finally, these provisions attempt - unlawfully and unconstitutionally - to extend the reach of this Commission’s jurisdiction beyond the boundaries of Ohio. No Ohio statute empowers this Commission to require an Ohio carrier to act in Ohio as it has elsewhere; moreover, such a result is prohibited by the Commerce Clause of the U.S. Constitution and is not required by the Telecommunications Act of 1996. U.S. Const., Art. 1, § 8, cl.3; 47 U.S.C. 252 (i); 47 CFR 51.809. The requirement that an ILEC (or an ILEC with CLEC affiliates) shall make available to any requesting carrier any terms and conditions of individual interconnection, service, or network elements and any provisions of interconnection arrangements which it makes available to other interconnecting carriers, whether in Ohio or in other jurisdictions, would have the effect of controlling commercial activity occurring wholly outside the state. The Commerce

Clause “precludes the application of a state statute to commerce that takes place wholly outside of the state’s borders, whether or not the commerce has effects within the state.” Healy v. The Beer Institute, 491 U.S. 324, 336 (1989). Any such statute “exceeds the inherent limits of the enacting State’s authority and is invalid regardless of whether the statute’s extraterritorial reach was intended by the legislature. Id.

4901:1-6-17 Mediation, negotiation, and arbitration of section 252 interconnection agreements

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-17 Mediation, negotiation, and arbitration of section 252 interconnection agreements

This Rule codifies the Commission's Mediation and Arbitration Guidelines adopted in Case No. 96-463-TP-UNC, which have worked reasonably well and can be expected to do so in the future. The OTIA has no specific comments, though technical and typographical comments, if any, will appear in the Markup.

4901:1-6-18 Collocation

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-18 Collocation

This Rule seeks to establish intrastate standards for collocation of carrier facilities. Because the issues addressed by this Rule are complex, contentious and the subject of extensive litigation at the federal level, the Commission should only incorporate applicable federal standards by reference.

4901:1-6-19 Compensation for the transport and termination of telecommunications traffic

**Case No. 99-998-TP-COI
Case No. 99-563-TP-COI**

4901:1-6-19 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 Local Comp Rules to defer resolution of these issues to that case.

Nonetheless, in response to the Local Comp Rules:

- The OTIA agrees that distinctions between local and toll traffic should be based on the ILEC's local calling area (including non-optional EAS, but excluding optional EAS); and
- The OTIA agrees with the Local Comp Rules's proposed treatment of end office and tandem termination rates charged by the CLEC, PROVIDED that the geographic coverage area for tandem-switching purposes is better defined to equate ILEC and CLEC serving areas; and
- The OTIA understands and submits that the rules resulting from the Local Comp Rules will have no effect on existing interconnection contracts, and specifically not on contracts for the provision of EAS.

However,

- The OTIA disagrees with the Local Comp Rules's suggestion to expand the requirement that LECs maintain records of the originating call details. Record-keeping requirements for traffic among carriers are properly the subject of negotiation, not rulemaking.

4901:1-6-19(D)(5) - Internet service provider traffic (ISP)

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

4901:1-6-20 Transit traffic compensation

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-20 Transit traffic compensation

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-21 Compensation for the transport and termination of non-local traffic

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-21 Compensation for the transport and termination of non-local traffic

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-22 Meet point billing (MPB)

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-22 Meet point billing (MPB)

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-23 Carrier-to-carrier tariff or model interconnection requirements

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-23 Carrier-to-carrier tariff or model interconnection requirements

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-24 Unbundled network elements (UNEs)

This Rule seeks to establish intrastate standards for unbundled network elements.

Because the issues addressed by this Rule are complex, contentious and the subject of extensive litigation at the federal level, the Commission should only incorporate applicable federal standards by reference. Accordingly, a rewritten Rule, referencing only applicable federal standards, will be proposed in the Markup.

4901:1-6-25 Carrier-to-carrier pricing

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-25 Carrier-to-carrier pricing

This Rule seeks to establish intrastate standards for intercarrier pricing. Because the issues addressed by this Rule are complex, contentious and the subject of extensive litigation at the federal level, the Commission should only incorporate applicable federal standards by reference. Accordingly, a rewritten Rule, referencing only applicable federal standards, will be proposed in the Markup.

4901:1-6-26 Interim rates for forward-looking economic costs

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-26 Interim rates for forward-looking economic costs

This Rule seeks to establish intrastate standards for intercarrier pricing. Because the issues addressed by this Rule are complex, contentious and the subject of extensive litigation at the federal level, the Commission should only incorporate applicable federal standards by reference. Accordingly, a rewritten Rule, referencing only applicable federal standards, will be proposed in the Markup.

4901:1-6-27 Forward-looking economic costs

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-27 Forward-looking economic costs

This Rule seeks to establish intrastate standards for intercarrier pricing. Because the issues addressed by this Rule are complex, contentious and the subject of extensive litigation at the federal level, the Commission should only incorporate applicable federal standards by reference. Accordingly, a rewritten Rule, referencing only applicable federal standards, will be proposed in the Markup.

4901:1-6-28 Cost study requirements

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-28 Cost study requirements

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-29 Resale

The OTIA continues to believe that this Rule is unnecessary. Resale obligations are the subject of unambiguous federal law, and no Ohio rule is necessary or appropriate. 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).

4901:1-6-29 (E) - Resale of lifeline

The OTIA objects to this Rule as worded, as it appears to require additional resale discounts, above and beyond retail lifeline discounts. The Rule should be revised as set forth in the Appendix.

4901:1-6-30 Rights-of-way, poles, ducts, and conduit

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 Local Comp Rules), and are otherwise a matter of private contract (i.e. interconnect arrangements) or municipal contract (governing right-of-way occupation and construction). 47 U.S.C. § 224; 47 U.S.C. § 253(a)(c). 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, Rule 4901:1-6-30(A)(5) 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 Local Comp Rules, the OTIA submits this is a set of issues that does not require regulatory intervention. Accordingly, this aspect of the Local Comp Rules should be abandoned and rewritten as set forth in the Appendix.

4901:1-6-31 Local number portability (LNP)

Case No. 99-998-TP-COI
Case No. 99-563-TP-COI

4901:1-6-31 Local number portability (LNP)

The OTIA has no comments concerning this Proposed Rule. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-32 Discrimination, affiliate transactions, and anti-competitive behavior

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-32 Discrimination, affiliate transactions, and anti-competitive behavior

This aspect of the Local Comp Rules is most dangerous. First, while this Rule appears 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 worlds 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 Local Comp Rules imposes needless paperwork and regulatory overhead. The Cost Allocation 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. Moreover, many carriers are required by federal regulation to maintain an entirely distinct and substantively different Cost Allocation Manual for similar reasons – for these carriers, to vary requirements for Ohio

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regulation makes no sense at all; it would be equivalent to requiring a slightly different calculation of "adjusted gross income" for Ohio income-tax purposes than is required for federal tax purposes.

Finally, the small telephone companies require much more latitude than this Rule provides. Development and maintenance of a Cost Allocation Manual would impose significant costs on small companies for no good reason.⁴ The Rule should be rewritten as set forth in the Appendix.

4901:1-6-32(G) - Financial arrangements

Furthermore, the financing provisions of this Rule will choke off capital for small carriers, which have no choice but to encumber telephone assets in connection with diversification efforts. The Rule will thus force retrenchment to traditional operations and traditional financing at the very moment when creativity is essential to both. Moreover, and most unfairly, this Rule would eliminate financing-approval requirements for CLECs while imposing unquestionably onerous obligations on ILECs.⁵ 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 Rule, 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

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

⁵ The OTIA does note, however, that this Rule for the first time establishes a 60-day automatic approval process for financings. While the theory of that provision may be appropriate, it fails to recognize reality. Most financings are sought with less than 60-day turnaround. Moreover, given the remaining provisions of the Rule, most of which will require waivers, the likelihood of an automatic approval is quite remote.

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authorized by Revised Code §§4927.03 and 4927.04(B). The Rule should be rewritten as set forth in the Appendix.

4901:1-6-33 Local exchange competition measurements

While the OTIA accepts the Commission's wish to monitor the competitive marketplace, this Rule 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, its usefulness, if any, expired. The OTIA is no more optimistic concerning this aspect of the Local Comp Rules. The Rule should be rewritten as set forth in the Appendix.

4901:1-6-34 Enforcement procedures

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

The above-listed Local Comp Rules, together with the threats of sanction expressed in Rules 4901:1-6-10 and 4901:1-6-11, would establish a comprehensive quasi-criminal system for enforcement of alleged "noncompliance."⁶ The principal result of that system will be to empower the enforcement arm of the Commission well beyond reasonable or lawful limits, and to grant that group overtly punitive authority for which it is neither equipped nor qualified. The ad terrorem nature of these Rules merely underscores the Commission's limited jurisdiction to "fine" any carrier outside of the transportation arena; Rule 4901:1-6-39 even directs how to pay fines the Commission cannot lawfully assess! The OTIA submits that the Commission should not be rattling sabers for no good reason, and that the above-described Rules should be abandoned. The Markup will reflect as much.

⁶ Notably, these Rules circumvent the Commission's lawful jurisdiction by establishing a mechanism to determine alleged "noncompliance" by Commission order, and then assessing forfeitures for failure to meet that Commission order. In other words, the system creates its own criminal violations as it goes along. Such a device must not be attempted by an administrative agency with any sense of its own jurisdiction. Any effort to enforce such a system would necessarily fail under judicial scrutiny.

**4901:1-6-35 Staff notice of probable noncompliance; proposed corrective action;
proposed forfeiture**

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

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4901:1-6-36 Service of staff notices of probable noncompliance, proposed forfeiture, proposed corrective action and proposed forfeiture

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

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4901:1-6-37 Settlement agreements and stipulations

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

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4901:1-6-38 Commission proceedings

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

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4901:1-6-39 Payment of forfeitures and other payments

The OTIA submits that these Rules are dangerous, defective and unlawful. While 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 that the Commission is neither a police force nor a court of law. Furthermore, the Commission has no authority to assess forfeitures against any carrier outside of the transportation field. Enforcement mechanisms ordered in this docket must adhere to the Commission's jurisdictional limitations.

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4901:1-6-40 Carrier-to-carrier alternative dispute resolution (ADR)

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-40 Carrier-to-carrier alternative dispute resolution (ADR)

The above-described Rules appear to codify the Commission's similar Guidelines established in Case No. 95-845 and related resulting dockets. The OTIA has no comments concerning them. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-41 Mediation for carrier-to-carrier disputes

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-41 Mediation for carrier-to-carrier disputes

The above-described Rules appear to codify the Commission's similar Guidelines established in Case No. 95-845 and related resulting dockets. The OTIA has no comments concerning them. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-42 Arbitration for carrier-to-carrier disputes

**Case No. 99-998-TP-COI
Case No. 99-563-TP-COI**

4901:1-6-42 Arbitration for carrier-to-carrier disputes

The above-described Rules appear to codify the Commission's similar Guidelines established in Case No. 95-845 and related resulting dockets. The OTIA has no comments concerning them. Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-43 Request for expedited ruling in a carrier-to-carrier complaint

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-43 Request for expedited ruling in a carrier-to-carrier complaint

The above-described Rules appear to codify the Commission's similar Guidelines established in

Case No. 95-845 and related resulting dockets. The OTIA has no comments concerning them.

Technical and typographical comments, if any, will appear in the Markup.

4901:1-6-44 Request for interim ruling pending dispute resolution in a carrier-to-carrier complaint

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

4901:1-6-44 Request for interim ruling pending dispute resolution in a carrier-to-carrier complaint

The above-described Rules appear to codify the Commission's similar Guidelines established in Case No. 95-845 and related resulting dockets. The OTIA has no comments concerning them. Technical and typographical comments, if any, will appear in the Markup.

Additional Issues Identified in the Commission's Entry of March 1, 2001

Case No. 99-998-TP-COI

Case No. 99-563-TP-COI

Additional Issues Identified in the Commission's Entry of March 1, 2001

In the Commission's Entry of March 1, 2001, the Commission sought comment on four additional topics:

- **Service Requirements Form** – The OTIA has no comments concerning the Service Requirements Form, though its form and content plainly should be adjusted in accordance with the final outcome of this docket.
- **Switchless Rebillers** – The OTIA believes that switchless rebillers are not “telephone companies” or “public utilities” and are therefore beyond the jurisdiction of this Commission. Nonetheless, the OTIA offers no comment concerning the Commission's intentions to exert such jurisdiction.
- **Continued Tariff Flexibility** – The Entry proposes to discontinue the tariffing flexibility afforded to ILECs in the Commission's Entry of May 11, 2000, apparently to establish consistency with the Local Comp Rules and their applicability only to ILECs operating under alternative regulation. The OTIA vigorously disagrees with that approach. Both the Staff and the Commission have publicly stated that the Local Comp Rules are designed to regulate based on the services provided, not the provider of the services. Correctly and laudably, the rule established in May 2000 accomplished that very result. To rescind it now would contradict those public statements, undermine the credibility of the Commission, and retreat from regulatory reform upon which ILECs were entitled to rely. The OTIA urges the Commission to reaffirm its decision.
- **Payphone Questions** – The OTIA responds to the Commission's questions concerning payphones as follows:

1. Should PUCO certify PSPs as telephone companies?

If the PSP satisfies all the requirements for certification as a telecommunications carrier, then the Commission is within its authority to grant such certification. The PAO only suggests this as a method to obtain wholesale pricing for the ILEC services they require to operate their business. Any PSP can voluntarily file for “telecommunications carrier” status with the Commission, and if the Commission determines the PSP qualifies for such status, the PSP can then obtain wholesale service pricing, just as any other CLEC would. Importantly, however, they must also acquire an obligation to pay into the USF fund, and all the other obligations that go along with being a “Telecommunications Carrier”. It should also be noted that making certification mandatory, especially when it is not required today, would likely serve as a barrier to future market entry.

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2. Should ILEC-offered payphone services be priced consistently with the "New Services Test"?

OTIA agrees with the FCC payphone Orders regarding application of the New Services Test ("NST") to ILEC offered payphone specific services. For those carriers to which it is applicable, the NST requires that pricing for services be cost based, and may include a reasonable allocation of joint and common costs. In fact, OTIA believes its members' current payphone specific services offered in Ohio do in fact comply with the NST pricing methodology.

3. Until NST compliance can be accomplished, should interim rates be based upon TELRIC methodology and subject to a true-up mechanism?

No. First of all, OTIA believes that its members' current rates are compliant with the NST. This Commission approved the required ILEC tariffs and the cost support accompanying them several years ago. The PAO has complained that the ILECs' rates do not comply with the NST, and there is an open Docket now at the Commission to determine this very issue. This Local Comp docket should not be the vehicle for obtaining payphone specific service rates that satisfy the NST. Moreover, on June 22, 2000, the Commission, in a Entry on Rehearing in Case 96-1310-TP-COI, Finding 14, struck down the PAO's motion by saying "The PAO's arguments concerning refunds and reimbursements are insufficient to overcome the effect of Ohio law. Issuance of refunds or reimbursements would be tantamount to retroactive ratemaking."

Additionally, the FCC has established in its payphone and local competition Orders that PSPs are retail customers, and the rates for retail payphone customers are NST based rates, not UNE/TELRIC based rates. OTIA understands that the PAO believes that the FCC Common Carrier Bureau Order 00-347 establishes that payphone specific services should be priced based upon TELRIC methodology. However, this order conflicts with previous FCC orders and the FCC will be reconciling this conflict in the Wisconsin Public Service Commission case now pending at the FCC. The PUCO should not do anything that ties payphone retail service rates to TELRIC pricing methodology until the FCC has issued an order resolving the conflicting FCC Orders on this particular issue.

4. Should the IXCs be subject to an annual review of their per call compensation payment obligation?

No. The FCC has conclusively determined these issues, and this Commission should defer to federal rules.

5. Should Property Imposed Fees (PIFs) be permitted?

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PIFs are imposed via the intraLATA and/or interLATA carrier toll rates. These rates are subject to competition, and also subject to federal and state disclosure rules. End users have the opportunity to hear a rate quote prior to call completion, and thus have the opportunity to seek a different carrier to complete the call. Since the consumer has choices, options and discretion to avoid paying toll rates that include PIFs, PIFs should be allowed.

6. Should non sent paid intrastate call rates be set by the state?

IntraLATA call rates, both sent paid and non sent paid, are approved by the Commission. Competition among carriers for intrastate/interLATA toll calls should drive the price points for this type of service.

7. Should local calls be subject to timing?

The FCC preempted state authority to set the local coin call rate from payphones in the Payphone Orders. The FCC stated this call rate should be market based. The issue of timing on a local call is really an issue of price for the local call, and the FCC has said the price for a local call is market based, thus, the state has no jurisdiction to regulate timing on a local coin call.

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
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