

ALABAMA CABLE TELECOMMUNICATIONS ASSOCIATION

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June 6, 2011

Via Hand Delivery and Email

Mr. Walter L. Thomas, Jr.

Executive Secretary

Alabama Public Service Commission

100 North Union Street, 8th Floor

Montgomery, AL 36130

**RE: Generic Proceeding to Consider Amending Rule T-27 Governing
Interconnection Agreements - Docket No.: 15957**

Please find attached comments on behalf of the Alabama Cable Telecommunications Association regarding the Generic Proceeding to Consider Amending Rule T-27 Governing Interconnection Agreements – Docket No.: 15957.

Sincerely,



Mark Fowler
Executive Director

Attachment



**BEFORE THE
ALABAMA PUBLIC SERVICE COMMISSION**

IN RE:

GENERIC PROCEEDING TO CONSIDER)	
AMENDING RULE T-27 GOVERNING)	DOCKET NO.: 15957
INTERCONNECTION AGREEMENTS)	

**COMMENTS OF THE
ALABAMA CABLE TELECOMMUNICATIONS ASSOCIATION**

The Alabama Cable Telecommunications Association (“ACTA”)¹ respectfully submits the following comments in response to the Alabama Public Service Commission’s (“Commission”) April 5, 2011 Order proposing amendments to Commission Rule T-27.

The Commission’s Telecommunications Staff (“Staff”) has proposed two amendments to Rule T-27. The first amendment would establish a rule concerning the time frame within which a competitive local exchange carrier may adopt an existing interconnection agreement. The second amendment would establish a procedure for notifying the Commission when an interconnection agreement is terminated by one or both parties. ACTA generally supports the Commission’s effort to adopt an amendment to its rules requiring that the Commission be notified when an interconnection agreement is terminated. However, for the reasons set forth below, ACTA recommends that the Commission refrain from adopting an inflexible rule concerning the time frame within which an interconnection agreement may be adopted.

Proposed Rule T-27(G)

The Commission should refrain from adopting proposed Rule T-27(G) because such a rule would create a significant and unnecessary impediment to adopting an interconnection agreement

¹ ACTA is the principal trade association representing the cable telecommunications industry in the State of Alabama. Its members include cable operators serving more than 98 percent of the state’s cable television subscribers, as well as more than 40 cable programming networks operating some 220 cable channels. ACTA’s members provide state-of-the-art high speed internet and digital telephone service to hundreds of thousands of Alabama consumers.

pursuant to 47 U.S.C. § 252(i) by effectively eliminating a large number of agreements from the overall pool of agreements that are available for adoption by competitors. Such a rule would also create an incentive for incumbents to engage in anticompetitive behavior. Both of these effects of the proposed rule would be contrary to the public interest because they would create obstacles to telecommunications competition in the State of Alabama.

Rule T-27(G), as proposed by the Staff, states as follows:

The Commission will not consider a request by a carrier to adopt (“opt in to”) an existing interconnection agreement that is within six (6) months of expiration unless the party with whom the carrier seeks interconnection consents to the “opt in” request.

In the Staff’s discussion regarding proposed Section (G), Staff states that “[a]ll negotiated interconnection agreements for wholesale services have both an effective date (“from”) and an expiration date (“to”),” and that “[w]hen the expiration date has been reached, one or more of the parties may terminate the agreement or both parties may renegotiate a new interconnection agreement.” Staff further asserts that most agreements “continue on a month-to-month basis for a period past the established expiration date, usually 180 days.”

As an initial matter, Rule T-27(G) is unnecessary. In 1996, the Federal Communications Commission adopted Rule 51.809, which implements interconnection agreement adoption procedures under 47 U.S.C. § 252(i), requiring that “[i]ndividual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.” 47 C.F.R. § 51.809(c). *See also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, FCC 96-325, 11 FCC Rcd. 15499 (Aug. 8, 1996). Over the 15 year period since the FCC’s action, the standard based on a “reasonable period of time” has provided flexibility to competitors and incumbents alike,

recognizing that a “reasonable” period of time for the adoption of an interconnection agreement may depend upon a variety of factors. The FCC’s rule, for example, may permit a longer period of time for competitors to adopt agreements with an incumbent who has not changed its technical requirements, rates, or terms of service, while permitting a shorter period of time where changes to such requirements or terms have been implemented. Few (if any) disagreements regarding the application of the “reasonable period of time” standard to an interconnection agreement adoption request have required Commission intervention.

Second, by adopting a Rule that would bar consideration of any interconnection agreement that is within six (6) months of expiration, the Commission would create a significant impediment to adopting an interconnection agreement by effectively eliminating a large number of agreements from the pool of available adoption candidates. While ACTA agrees that every interconnection agreement typically has an effective date and an expiration date, almost every interconnection agreement also contains a provision permitting renewal of the agreement – either for consecutive monthly periods, 180-day periods, or yearly periods. Many competitors and incumbents choose to allow their expired agreements to remain in effect pursuant to their renewal terms. As a result, many interconnection agreements remain in existence today solely because of such renewal terms. The Commission’s rule, however, would eliminate from the pool of available interconnection agreement adoption candidates all agreements having a month-to-month or 180-day renewal period that are then-existing only by virtue of their renewal terms – even if such agreements thereafter continue in effect for several years.²

Third, adoption of proposed Rule T-27(G) may have the unintended consequence of incenting incumbents to engage in anticompetitive behavior. If an incumbent wished to avoid

² It is unclear whether proposed Rule T-27(G) would bar Commission consideration of a request to adopt an interconnection agreement that recently renewed pursuant to a year-to-year renewal term.

having a particular interconnection agreement adopted by another competitor, the incumbent could seek to structure the term of the agreement as having a 6-month initial term, followed by rolling 6-month renewal periods. Likewise, an incumbent could adopt a practice of allowing agreements having initial terms of 2 or 3 years to remain in effect for several additional years (possibly even longer than the initial term stated in an agreement) pursuant to their renewal terms, thus precluding the adoption of agreements under which the incumbent nonetheless continued to perform for years after adoption was foreclosed. Alternatively, incumbents could seek to extract concessions from competitors – through the addition, modification, or deletion of agreement terms – as a condition of providing the incumbent’s consent to the adoption of an interconnection agreement that was nearing expiration of its initial term or that continued to remain effective subject to its renewal terms.

Any lack of interconnection agreements available for adoption pursuant to 47 U.S.C. § 252(i) creates significant obstacles to competition, including increased costs and increased time to initiate the provision of service in new markets or service areas. Specifically, if interconnection agreements are not available for adoption, a potential competitor might choose not to initiate the provision of telephone service in a small (or potentially rural) market where it cannot justify the cost of negotiating an interconnection agreement, or a competitor might choose to withdraw from a market or service area where its existing interconnection agreement is expiring but its market penetration cannot support the cost of negotiating and/or arbitrating a replacement interconnection agreement. Similarly, if interconnection agreements are not available for adoption, competitors may need to delay their market entry plans for up to a year or longer while they negotiate, and potentially arbitrate, an interconnection agreement with the incumbent. In either situation, Alabama customers would suffer due to the lack of available alternatives, lower rates, and service innovation that results from robust competition.

Conclusion

For the foregoing reasons, ACTA respectfully urges the Commission not to adopt proposed rule T-27(G).

Respectfully submitted this 6th day of June, 2011.

A handwritten signature in black ink, appearing to read "Mark Fowler", written in a cursive style.

Mark Fowler
Executive Director
Alabama Cable Telecommunications Association