

# **EXHIBIT 19**



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In the Matter of the Complaint of McLeodUSA  
Telecommunications Services, Inc. dba PAETEC  
Business Services and LDMI Telecommunications,  
Inc. Complainants

v.

AT&T Ohio, Respondent.  
No. 11-3407-TP-CSS

Ohio Public Utilities Commission  
October 12, 2011

ENTRY

BY THE COMMISSION.

The Commission finds:

(1) On June 3, 2011, McLeodUSA Telecommunications Services, LLC dba PAETEC Business Services (McLeodUSA) and LDMI Telecommunications, Inc. (LDMI) (collectively PAETEC) filed a complaint against AT&T Ohio (AT&T). McLeodUSA and LDMI identify themselves as operating subsidiaries of PAETEC Holding Corp. In the complaint, PAETEC alleges that AT&T charges rates for collocation that are unjust, unreasonable, unjustly discriminatory, unjustly preferential, and unlawful. More specifically, PAETEC accuses AT&T of basing its direct current (DC) collocation power charges on amps of ordered cable capacity instead of amps of power used. According to PAETEC, this results in AT&T charging for power that PAETEC does not consume and costs that AT&T does not incur. Moreover, PAETEC asserts that AT&T's practice discriminates against PAETEC and other collocators in favor of itself. In doing so, PAETEC concludes that AT&T recovers DC power costs that significantly exceed the cost that AT&T incurs in providing power.

(2) PAETEC points out that DC power is a resource shared by AT&T and other collocators. As a result of AT&T's rate application methodology, PAETEC

contends that AT&T is effectively subsidizing its own DC power costs by overcharging other collocators.

(3) In addition to declaring that AT&T's rates are discriminatory, PAETEC claims that AT&T's rates violate total element long run incremental cost (TELRIC) and cost causation principles. PAETEC alleges that AT&T's rate allows it to recover from collocators DC power costs that significantly exceed the incremental cost that AT&T incurs in providing DC power to collocators. Because AT&T incurs DC power costs based on usage, PAETEC believes that cost causation principles dictate that AT&T should recover DC power costs based on usage.

PAETEC believes that AT&T is recovering through its billings for DC power amounts that are significantly in excess of AT&T's forward-looking economic cost of provisioning DC collocation power. This over-recovery, according to PAETEC, fails to adhere to TELRIC methodology. In effect, PAETEC accuses AT&T of collecting anticompetitive monopoly rents from collocators.

(4) In further criticism, PAETEC alleges that AT&T's rate methodology violates federal and state laws and rules. Federal law provides rules pertaining to collocation. Specifically, PAETEC notes that [47 U.S.C. Section 251\(c\)\(6\)](#), provides that incumbent local exchange carriers (ILECs) have certain obligations, including, "[t]he duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier...." Moreover, PAETEC argues that AT&T, as an ILEC, must treat competitive local exchange carriers (CLECs) with parity. In further support of its position, PAETEC refers to FCC rule 51.321 as a basis to require AT&T to provide unbundled network elements (UNEs) on terms that are just, reasonable, and nondiscriminatory. In its complaint, PAETEC cites other state and federal rules to sup-

port these principles. PAETEC also relies on federal and state rules that favor TELRIC pricing.

(5) To remedy AT&T's rate application methodology, PAETEC advocates the use of a measured usage rate. It is PAETEC's opinion that such a rate would cure the faults that it has highlighted in its complaint. PAETEC notes that usage-based billing is feasible, has been implemented in several other states in the AT&T region, and has been endorsed by state commissions.

(6) PAETEC alleges that it has tried to resolve this issue without litigation. It cites one effort where in January 2008 it requested that AT&T port the Illinois interconnection agreement that contained a usage-based billing provision. AT&T refused. Additionally, PAETEC alleges that AT&T refused to amend the current Ohio interconnection agreement to align with an agreement that AT&T agreed to in Michigan.

(7) For relief, PAETEC seeks several directives from the Commission. First, PAETEC asks that the Commission recognize that AT&T's DC collocation power rate application methodology violates various federal and state statutes and rules. Second, PAETEC wants the Commission to open a docket to adjudicate the complaint and to determine the appropriate rate application methodology. Third, PAETEC seeks a directive that AT&T cease applying its collocation power rate to amps of cable capacity and instead apply the rate to amps of measured usage. Fourth, PAETEC urges the Commission to issue an order making the proposed power measuring amendment available for adoption in new and existing interconnection agreements with AT&T.<sup>FN1</sup> Fifth, PAETEC seeks a directive that AT&T refund to PAETEC the difference between the rate applied and the rate suggested by PAETEC retroactive to January 2008. PAETEC chooses January 2008 because that is when PAETEC implored AT&T to port the Illinois interconnection agreement that included the provision for measured DC power.

<sup>FN1</sup>. The proposed amendment is con-

tained in Attachment H of the complaint.

(8) On July 5, 2011, AT&T filed an answer to the complaint. In general, AT&T denies the material allegations in the complaint.

(9) On July 5, 2011, AT&T also filed a motion to dismiss. At the outset, AT&T proclaims that the complaint fails to state reasonable grounds. AT&T asserts several reasons for its conclusion. As a basis for dismissal, AT&T argues that the complaint is an improper challenge to a valid, existing interconnection agreement. AT&T points out that the complainants have entered into interconnection agreements and amendments to those agreements that have been approved by the Commission pursuant to federal law. AT&T contends that the Commission does not have authority to reform these contracts upon unilateral request through a complaint proceeding. AT&T notes that neither CLEC has sought to negotiate a successor agreement.

AT&T rejects the notion that the complainants have a claim under [Section 251\(c\)\(6\)](#) of the Telecommunications Act of 1996 (the Act). The complainants cite this provision for the principle that collocation rates must be just, reasonable, and nondiscriminatory. AT&T highlights that Section 252 of the Act allows parties to enter into agreements without regard to the standards in [subsections \(b\) and \(c\) of Section 251](#). AT&T interprets this to mean that parties may agree to terms that are more or less than what they would be entitled to under the Act. Moreover, citing case law, AT&T concludes that a CLEC's collocation rights come solely from the terms agreed to in an interconnection agreement. Thus, according to AT&T, the proper mechanism for changing collocation terms is through negotiation or arbitration. Without a claim that AT&T has breached the interconnection agreement, AT&T reasons that PAETEC cannot state a claim for which relief can be granted.

(10) AT&T labels the complaint as an improper shortcut around established processes. AT&T emphasizes that the complainants may terminate the interconnection agreement to commence negotiations on successor agreements. The complaint, ac-

ording to AT&T, is a shortcut to this process. AT&T acknowledges that the Commission has authority to consider claims for a breach of an interconnection agreement. However, AT&T claims that the Commission is barred by [Section 4927.04, Revised Code](#), from considering whether AT&T's method of billing for collocation power violates federal law. Adding to its arguments, AT&T states that allowing the complaint to proceed would raise issues of jurisdiction.

(11) In support of its position, AT&T states that the Commission has approved AT&T's collocation power billing method in several contexts. Specifically, AT&T refers to the approval of its TELRIC rates in *In the Matter of the Review of Ameritech Ohio's Economic Costs for Interconnection, Unbundled Network Elements, and Reciprocal Compensation for Transport and Termination of Local Telecommunications Traffic*, Case No. 96-922-TP-UNC (Case No. 96-922-TP-UNC) and the consideration of AT&T's proposed carrier-to-carrier tariff in *In the Matter of the Application of Ameritech Ohio for Approval of a Carrier-to-Carrier Tariff*, Case No. 00-1368-TP-ATA (Case No. 00-1368-TP-ATA), the complaint filed by Nu-Vox Communications of Ohio in Case No. 03-802-TP-CSS (*Nu Vox*), and Ameritech Ohio's long distance entry under Section 271 of the Act.

(12) As a further basis for dismissal, AT&T asserts that the complainants' claims are barred by the doctrines of laches, estoppel, and waiver. AT&T points out that the CLECs could have objected to the collocation power provisions at any time but did not. Moreover, by agreeing to the contract provisions, they should be deemed to have waived any rights to relief.

(13) AT&T declares that the complainants' claims are barred by state law. According to AT&T, [Section 4927.03\(C\), Revised Code](#), nullifies any count of the complaint that relies on [Sections 4905.04, 4905.05, 4905.06, 4905.22, 4905.33, 4905.35, and 4905.37, Revised Code](#). AT&T emphasizes that these provisions do not apply to telephone companies. Chapter 4927, Revised Code, now contains the bulk of statutory provisions applicable to telephone

companies. AT&T believes that the complainants have failed to take full account of the limitations on the Commission's authority as a result of the statutory changes.

(14) Noting the complainants' reference to a request to port an agreement, AT&T responds that the request was properly denied. AT&T points out that porting requests are subject to state-specific pricing. The complainants, AT&T claims, sought to negate the state-specific pricing requirement. On this basis, AT&T believes that it properly denied the porting request.

(15) The complainants filed a memorandum contra on July 20, 2011. PAETEC calculates that, on average, AT&T overcharges it \$441,408 every year for collocation DC power. Because AT&T uses the same power plant as competitive collocators, PAETEC concludes that AT&T, in effect, uses DC power without a charge. PAETEC emphasizes that AT&T's practice violates the nondiscrimination requirement embodied in [Section 251\(c\)](#) of the Act.

To address the issue of discrimination, PAETEC proclaims that *Nu Vox* established precedent for obtaining relief through the complaint process. Moreover, PAETEC rejects AT&T's defense that the Commission's approval of the interconnection agreement containing the collocation power charge rate precludes it from hearing the issue. PAETEC emphasizes that, approval of the interconnection agreement notwithstanding, the Commission has not considered discriminatory treatment of a competitor. Nor, argues PAETEC, has the Commission considered PAETEC's measured rate proposal.

(16) PAETEC labels as incorrect AT&T's argument that [Section 4927.03\(C\), Revised Code](#), precludes the application of Chapter 4905, Revised Code. To the contrary, PAETEC finds that [Section 4927.03\(C\), Revised Code](#), expressly does not limit the application of Chapter 4905 to decide carrier-to-carrier issues.

To substantiate its point further, PAETEC argues that [Section 4905.26, Revised Code](#), may be used to remedy a violation of Rule 4901:1-7-11, [Ohio Administrative Code \(O.A.C.\)](#). [Rule 4901:1-7-11, O.A.C.](#), among other things, provides for collocation

tion on nondiscriminatory terms. Moreover, PAETEC believes that [Rule 4901:1-7-11, O.A.C.](#), the rule pertaining to collocation, provides a basis for applying [Section 4927.03\(C\), Revised Code](#), as well as other state and federal statutes and Commission rules and policies in this proceeding.

Construing Commission decisions, PAETEC concludes that Chapter 4905, Revised Code, is necessary to carry out [Section 4927.04, Revised Code](#),<sup>FN2</sup> and [Rule 4901:1-7-11, O.A.C.](#) Finally, PAETEC notes that AT&T admits that the Commission has jurisdiction over the subject matter of the complaint. From this, PAETEC contends that AT&T acknowledges that the complaint states reasonable grounds.

<sup>FN2</sup>.[Section 4927.04, Revised Code](#), empowers the Commission with authority to implement laws and regulations delegated to it by federal law.

(17) PAETEC aims to refute AT&T's characterization that the Commission has authorized AT&T's billing method or that the FCC has rejected measured, usage-based billing. PAETEC rejects as distinguishable and irrelevant the cases and FCC order that AT&T relies upon to show that the Commission has approved AT&T's method of allocating collocation power costs. To start, PAETEC points out that the FCC recognized two exceptions where discrimination may be permissible. First, equal treatment is not required if it is not technically feasible. Second, if the ILEC carries the burden of proving that there are "legitimate cost differences" it may be relieved of providing equal treatment. PAETEC asserts that AT&T has not demonstrated the existence of either of these exceptions.

PAETEC points out that AT&T's billing methodology only recently came to light through litigation that PAETEC initiated in 2006. It was through that process that regulators had an opportunity to scrutinize AT&T's collocation billing methodology. To PAETEC, it is important to note that AT&T's cited authorities do not address the issue of whether AT&T's billing method based on 50 percent total

cable capacity should be rejected in favor of PAETEC's proposed method based on measured usage. PAETEC contends that none of the cases, nor the orders issued in the state and federal 271 proceedings, nor the FCC's order approving AT&T's Section 271 authority address this issue. Moreover, because the FCC approved SBC's Section 271 authority in Illinois and Wisconsin, PAETEC argues that AT&T cannot say that the FCC has rejected usage-based collocation power charges. PAETEC points out that, in both states, regulators require measured usage.

(18) PAETEC rejects AT&T's argument that PAETEC's claims are barred by the doctrines of laches, estoppel, or waiver. Noting that the Commission is a creature of statute, PAETEC concludes that the Commission has no power to apply equitable doctrines. Moreover, taking the facts into consideration, PAETEC contends that AT&T has no basis for asserting these equitable defenses. PAETEC states that it has been fighting AT&T for years in various states concerning what it regards as discriminatory collocation billing.

(19) PAETEC summarizes AT&T's argument thusly: The Commission has no authority through the complaint process to reform the parties' interconnection agreement at the unilateral request of a party. PAETEC disagrees. In rejecting AT&T's argument, PAETEC contends that the parties' interconnection agreement incorporates provisions of the Act and Ohio law that contain nondiscrimination requirements. Moreover, PAETEC declares that the obligations of the Act supersede any inconsistent terms in the interconnection agreement. According to PAETEC, the Commission would not need to reform the parties' interconnection agreement; it would only need to enforce its nondiscrimination provision.

(20) AT&T filed a reply on July 27, 2011. AT&T points to the language of the interconnection agreement as a basis for rejecting PAETEC's claims. AT&T highlights the following language:

SBC Ohio shall prospectively bill the CLEC for DC collocation power at a monthly recurring rate of \$9.68 per AMP applied to fifty percent (50%) of

the ordered capacity that is fused. By way of example, where a CLEC has ordered and SBC Ohio has provisioned two (2) twenty (20) AMP DC power leads that have been fused (for a combined total of (40) AMPs), based upon that representation and warranty [that CLEC will at no time draw more than 50% of the combined ordered capacity of the DC power leads], SBC Ohio shall bill the CLEC the monthly recurring charge of \$9.68 for a total of twenty (20) AMPs (i.e., \$193.60 per month).

AT&T asserts that PAETEC agreed to these terms, that AT&T bills PAETEC in accordance with these terms, and that PAETEC does not claim otherwise. AT&T believes that PAETEC's arguments are contrary to principles of contract law and the Act.

(21) AT&T notes that PAETEC has succeeded in amending its collocation power arrangements in some states. AT&T emphasizes, however, that PAETEC has lost in its efforts to do so in most states. AT&T praises those states for their analysis of federal law and respect for the sanctity of interconnection agreements.

AT&T criticizes PAETEC for alleging new facts and basing several arguments on those facts. AT&T, therefore, believes PAETEC erred by not amending its complaint to assert the new facts.

AT&T contends that PAETEC's reliance on *Nu Vox* as proof of the Commission's approval of a collocation power arrangement is misplaced. AT&T points out that the case was dismissed with prejudice following a settlement. Therefore, the Commission did not rule on substantive issues. Also misplaced, according to AT&T, is PAETEC's reference to [Section 4927.03\(C\), Revised Code](#). AT&T does not find an exception for carrier-to-carrier complaints. AT&T emphasizes that the listed sections of the Revised Code do not apply to a telephone company except as specified.

(22) As a basis for dismissing the complaint, AT&T argues that the interconnection agreement alone determines the rights and obligations of the parties. AT&T rejects the notion that PAETEC can override a specific provision in the interconnection agreement by making a general reference to federal law. In disagreement with PAETEC, AT&T declares

that the Commission's role is limited by federal law. Citing a federal case, AT&T concludes that a state regulatory commission is limited to arbitrating, approving, and enforcing interconnection agreements. According to AT&T, after approval by the commission, the agreement becomes a binding contract and is regulated by the contract. AT&T quotes that once the interconnection is approved "federal and state law operating of their own force are irrelevant." With this limitation, AT&T emphasizes that the state commission cannot change the terms of the agreement. Moreover, adds AT&T, to whatever degree PAETEC claims that state law imposes obligations on AT&T beyond the interconnection agreement, the state law is preempted. Taking these standards into account, AT&T argues that the Commission would unlawfully change the terms of the agreement if it were to grant PAETEC's request.

(23) AT&T rejects PAETEC's claim that it found new evidence concerning AT&T's collocation charges. Pointing to the Commission's TELRIC cost docket, Case No. 96-922-TP-UNC, where the Commission conducted 33 days of hearings and received over 250 exhibits into evidence, AT&T finds no basis for PAETEC's assertion that information concerning collocation charges is new. Further undermining PAETEC's credibility, AT&T refers to the issue of metering in cageless and shared cage collocation that was explored in Case No. 96-922-TP-UNC and Case No. 00-1368-TP-ATA. In those proceedings, AT&T points out that a coalition of CLECs urged the Commission to adopt charging on the basis of amps used instead of amps that might be fused. Given this fact, AT&T sees no support for PAETEC's claim of "new information."

(24) Looking to the language of the interconnection agreement itself, AT&T finds more reasons that bar PAETEC's complaint. Citing portions of the interconnection agreement, AT&T finds explicit language supporting the rejection of the complaint. As an example, AT&T highlights language in the Amendment to the interconnection agreement that states that the parties have agreed to "relinquish any right, during the term of the Amendment, to a dif-

ferent rate and billing procedure (including rate application).”

AT&T points out that PAETEC could have raised the measuring issue with the negotiation and execution of the Ohio collocation power amendments. PAETEC did not. AT&T suggests that PAETEC could raise the issue now by negotiating a successor agreement.

(25) Responding to PAETEC's rejection of AT&T's equitable defenses, AT&T points to the inconsistency in PAETEC's request for equitable relief. PAETEC argues that the Commission is not a court of equity and, therefore, cannot grant relief based upon the equitable defenses of laches, estoppel, and waiver. AT&T, however, finds it ironic that PAETEC seeks relief in equity through reformation of the interconnection agreement. As a legal principle, AT&T highlights that contract reformation is only available in cases of fraud and mutual mistake of the parties. To the contrary, asserts AT&T, the parties' agreement reflects the intent of the parties. Consequently, reformation of the contract is not available as a remedy.

(26) To counter PAETEC's authorities, AT&T cites decisions adverse to PAETEC's position. Noting PAETEC's reliance on a decision from the Iowa Commission, AT&T points out that the import of the case is diminished because it is on appeal. In Arizona, AT&T states that a United States district court affirmed the decision of the Arizona Corporation Commission which rejected an argument nearly identical to the one presented in this proceeding. The district court agreed with the commission's finding that Section 252 of the Act allows carriers to enter into interconnection agreements without regard to the nondiscrimination requirements of [Section 251](#). The Colorado, Utah, and Washington commissions also rejected PAETEC's arguments, AT&T contends. Because the Michigan complaint case referenced by PAETEC was settled, AT&T sees no precedential value or impact upon the issues in this case.

(27) On August 3, 2011, PAETEC filed a motion for leave to file a surreply instantler. As reasons for its surreply, PAETEC states that AT&T's reply re-

ferred to facts outside of PAETEC's complaint and that AT&T cited to new authority and arguments regarding the parties' amendments to their interconnection agreement.

More specifically, PAETEC argues that AT&T relies on facts from other proceedings to refute allegations in the complaint. In addition, PAETEC accuses AT&T of presenting new authority, in the form of 2003/2004 PAETEC amendments to the interconnection agreement, to argue that PAETEC has waived any right to a different rate application absent a cost proceeding. PAETEC believes that these arguments should have been raised in AT&T's initial memorandum in support of its motion to dismiss. Instead, AT&T chose to raise the arguments after PAETEC filed its memorandum contra. For this reason, PAETEC believes that it has shown good cause for a surreply pursuant to [Rule 4901-1-38\(B\)](#), O.A.C. PAETEC points to one federal court decision and three state commission decisions as the authorities that AT&T relied upon to undermine PAETEC's position. Inclusion of these authorities in its motion to dismiss would have allowed PAETEC to respond in its memorandum contra.

PAETEC also rebukes AT&T for including arguments related to the 2003/2004 PAETEC amendments. PAETEC highlights that arguments based on the amendments was available prior to the motion to dismiss. As a matter of fairness, PAETEC contends that it should be given an opportunity to respond through surreply.

(28) In its surreply, PAETEC contends that there is a principle that when ruling on a motion to dismiss, the Commission must accept the facts alleged in the complaint as true. In its critique of AT&T's motion to dismiss, PAETEC accuses AT&T of litigating the facts. Deciding facts, according to PAETEC, is not appropriate when ruling on a motion to dismiss.

As for the new authority asserted by AT&T, PAETEC claims that the authority relied upon by AT&T supports PAETEC's position. That the cases were heard and decided on the basis of a record, suggests that it would be appropriate for this Commission to allow the parties to present evidence at a

hearing.

Noting AT&T's claim that the 2003/2004 PAETEC amendments only allow for revisions in the power rate application through a cost proceeding, PAETEC responds that there is no definition of a cost proceeding in the amendments. To PAETEC, its complaint could be construed as a cost proceeding within the meaning of the amendment.

Overall, PAETEC contends that its complaint provides a statement that clearly explains the facts that support a claim of discrimination. Moreover, PAETEC argues that it has provided a statement of the relief sought. For these reasons, PAETEC concludes that it has adequately pled its claims pursuant to [Rule 4901-9-01\(B\), O.A.C.](#), and that AT&T's motion to dismiss must be denied.

(29) On August 19, 2011, AT&T filed a memorandum contra. AT&T denies that it has raised any new issues that would justify the need for a surreply. First, AT&T rejects PAETEC's claim that AT&T has pointed to facts from other proceedings beyond PAETEC's complaint to support its motion to dismiss. Instead, AT&T argues that the Commission considered and resolved the issue concerning collocation power cost allocation in AT&T's favor.

Second, AT&T admits to citing additional authority. AT&T explains that it did so to counter the precedents cited by PAETEC to support its complaint.

Third, AT&T denies that its discussion of the collocation power amendments is unfair. AT&T's position is that the Commission-approved amendments are valid and bar PAETEC's complaint. PAETEC has taken the contrary position that the amendments do not bar its complaint. In all, AT&T sees nothing unusual about the process or that there is a violation of due process. Moreover, AT&T believes that the Commission may take notice of the interconnection agreements and amendments. In sum, AT&T concludes that PAETEC has failed to show good cause in support of its surreply.

(30) In a letter filed August 24, 2011, PAETEC informed the Commission that it would not file a reply to AT&T's memorandum contra. Upon review, PAETEC determined that AT&T did not raise in its memorandum contra any argument that had

not been addressed in its motion for leave to file a surreply.

Noting that the parties have completed briefing, PAETEC requests that a prehearing conference be scheduled to discuss a procedural schedule. PAETEC also raised the issue of mediation.

(31) PAETEC's motion to file a surreply shall be granted. Both parties appear to have introduced facts, arguments, and authority that exceed the bounds of the complaint. So that the Commission will be more fully advised, the motion for surreply shall be granted.

(32) For the following reasons, AT&T's motion to dismiss shall be granted. PAETEC requests that we determine whether AT&T discriminates against PAETEC and overcharges it for collocation. Essentially, PAETEC argues that AT&T's DC power charges exceed the actual costs of consumption. PAETEC asserts that this issue was only recently uncovered and was not raised in the mere approval of its amendments and interconnection agreement with AT&T. We agree with PAETEC that we have not previously addressed the issue of whether a capacity-based rate or a usage-based rate is more appropriate to recover power costs. However, it is important to note that various CLECs participated in Case No. 96-922-TP-UNC, a case that approved the type of rates incorporated into the parties' current interconnection agreement. Among the many findings in that case, the Commission evaluated capacity-based pricing and, in its March 13, 2003, opinion and order, found it to be reasonable. McLeodUSA and LDMI participated in the proceeding.<sup>FN3</sup> PAETEC, therefore, has notice of the findings and conclusions issued in Case No. 96-922-TP-UNC.

<sup>FN3</sup>. McLeodUSA and LDMI appear on the service list of the March 13, 2003, opinion and order.

(33) It must be decided, however, whether the complaint is a proper mechanism for considering AT&T's collocation charges. AT&T considers PAETEC's complaint to be an improper challenge

to an established interconnection agreement. In addition, AT&T believes that PAETEC is attempting an improper short-cut around established processes. In AT&T's opinion, PAETEC's collocation rights are confined to the terms of the interconnection agreement and cannot be altered through a complaint proceeding.

(34) In consideration of the provisions of the Act, we find that AT&T's collocation charges, even if alleged to be unjust or discriminatory, do not entitle PAETEC to relief through a complaint.

Section 251 of the Act governs interconnection. Section 251(a) imposes a general duty that telecommunications carriers must interconnect with the facilities of other telecommunications carriers. Beyond general duties, ILECs have additional obligations that they must adhere to under Section 251(c). Among the enumerated duties are standards for collocation. Section 251(c)(6) addresses collocation specifically. Section 251(c)(6) states in pertinent part that ILECs have a "duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier..." Ending the analysis here would dictate an outcome favorable to PAETEC. However, Section 251(c)(6) and Section 252(a) must be read in pari materia.

Section 252(a) of the Act governs agreements arrived at through negotiation. Section 252(a)(1), which sets the standards for voluntary negotiations, states that "[u]pon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251" (emphasis added). Reading Section 252(a)(1) together with Section 252(c)(6), it is our interpretation that parties are free to set their own standards (i.e., rates, terms, and conditions). Furthermore, we shall interpret our rules and applicable statutes so that they are consistent with the Act.

(35) In the give and take of negotiations, it is entirely plausible that a party could agree to unfavorable terms in one area in exchange for more favorable terms in another area that is more important for its business plan. If circumstances expose or a party discovers an unfavorable term after executing the agreement this event alone would not necessarily speak to the favorability of the agreement as a whole. That a party should subsequently discover an unfavorable term should not be cause for revocation of the term or its substitution by a term more favorable to the protesting party. Allowing such an option would undermine the certainty of contractual obligations. A course for PAETEC to take in such an event is termination of the current interconnection agreement pursuant to the terms of the agreement followed by the negotiation of a successor agreement.

(36) Taking into account the facts of this case, we find that AT&T and PAETEC established by agreement the standards for their collocation, as they were free to do under the provisions of the Act. We do not believe that PAETEC's request to extract and isolate collocation as an issue for litigation is contemplated by the Act. Moreover, granting PAETEC's request to change a term in its interconnection agreement in such a manner would establish a precedent and a policy at odds with basic principles of contract law. We do not believe that it would be prudent to allow a party to highlight for litigation an agreed provision in a contract, particularly where there is no allegation of breach and where it is done solely on the basis of alleged unfairness.

It is, therefore,

ORDERED, That, in accordance with Findings (34) through (36), AT&T's motion to dismiss the complaint is granted. It is, further,

ORDERED, That copies of this entry be served upon all parties and interested persons of record.

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