

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

**Gallatin River Communications L.L.C.** :  
**d/b/a CenturyLink GRC and** :  
**CenturyLink Communications, LLC** :  
 : **14-0330**  
**Verified Petition for Waiver of the** :  
**Equal Access Scripting Requirements** :  
**of 83 Ill. Adm. Code Part 773.140(b).** :

**ORDER**

By the Commission:

**I. INTRODUCTION**

On April 23, 2014, Gallatin River Communications L.L.C. d/b/a CenturyLink GRC and CenturyLink Communications, LLC ("Petitioner") filed a verified petition with the Illinois Commerce Commission ("Commission") requesting a permanent waiver of the equal access ("EA") scripting obligations in Section 773.140(b) of 83 Ill. Admin. Code 773, "Presubscription" ("Part 773"). Section 773.140(b) requires that local exchange carriers ("LEC") inform new customers that they have a choice of long distance providers and can choose different providers for local toll ("intraLATA") and long distance ("interLATA") services. Petitioner believes that granting the waiver will promote consistency regarding how the Commission and the Federal Communications Commission ("FCC") address this specific issue.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on May 13 and 22, 2014. Counsel entered an appearance on behalf of Petitioner and Commission Staff ("Staff"). No others entered an appearance or petitioned to intervene. The Verified Statement of James Zolnierek, the Director of the Policy Division of the Commission's Bureau of Public Utilities, was entered into the record. At the end of the latter hearing, the record was marked "Heard and Taken." Neither Petitioner nor Staff submitted a brief in this matter. There are no contested issues.

**II. BACKGROUND**

Following the break up of the Bell System in 1982, the FCC implemented a number of measures to encourage competition and consumer choice in the long distance telephone market. One of the steps the FCC took was to require EA. EA refers to a class of service whereby all interexchange carriers ("IXCs" or "long distance service providers") receive equivalent connections to the LEC's network. Where a LEC serves customers using EA switches, those customers can utilize their preferred long

distance provider by presubscribing to their preferred IXC. Presubscription is the method by which a customer can predesignate an IXC or IXCs to carry its intra-market service area ("intraMSA" or "local toll") and inter-market service area ("interMSA" or "long distance") calls, without dialing an access code. When the customer dials "1" plus the ten digit telephone number they want to reach, the call is routed by the LEC to the customer's presubscribed IXC.

In 1995, finding "intraMSA presubscription is in the public interest and is a logical step in opening markets to competition" and "Illinois consumers expect to gain benefits from being able to choose an intraMSA tool provider" (Docket No. 94-0048, April 7, 1995 Interim Order at 5), the Commission codified administrative rules governing presubscription. Section 773.140(c) of Part 773, as initially adopted by the Commission, stated:

- c) For new customers requesting network access service after presubscription consistent with this Part is implemented in an exchange, the LEC or other carrier receiving the request shall inform the customer, when service is requested, of its presubscription choices and shall provide the following information before either asking for the customer's presubscription selections and/or marketing its own interexchange services:
  - 1) The customer service representative shall inform the new customer that the customer can select from a number of IXCs for presubscribed interexchange service, and shall describe the available presubscription choices in a manner that does not attempt to influence customers regarding their selections;
  - 2) The representative shall offer to provide the names of IXCs serving that office in random order as well as the telephone numbers of the IXCs. If the customer indicates its selections, the representative shall not solicit the customer further for the carrier's interexchange services.

In adopting these rules, the Commission found that since the LECs in particular will continue to be the first point of contact for many customers, a continuing customer education process is needed.

In 2004, the Commission amended Part 773. It eliminated Section 773.140(c) and adopted the current Section 773.140(b) language stating:

- (b) On an incoming call from a new customer requesting network access service, the company representative shall inform the customer that he has a choice of long distance providers and that different providers can be chosen for local toll (intraLATA) and long distance (interLATA) services.

The Commission stated in support of this revision that the revised requirement “mirrors the current federal requirement.” (Docket No. 03-0203, December 17, 2003 Interim Order at 6) The Commission further found that the previous rules represented “a level of regulation that we no longer believe necessary in the areas of presubscription and PIC freezes” and that they were “inconsistent with the development of a more competitive marketplace.” (Id.)

On August 31, 2007, the FCC determined that its EA scripting requirements for interMSA long distance service were no longer justified in the current competitive telecommunications market and it granted Regional Bell Operating Companies (“RBOCs”) forbearance from the federal scripting requirements. Following the FCC’s grant of forbearance, the RBOCs Illinois Bell Telephone Company, Verizon North Inc. (now Frontier North Inc.), and Verizon South Inc. (now Frontier Communications of the Carolinas LCC), petitioned the Commission for a waiver of the EA scripting requirements of Section 773.140(b). The Commission granted the waiver request concluding on the basis of the FCC’s grant that “the requested waiver will not harm competition” and further finding that “harmonization of state and federal requirements to be prudent and consistent with the public interest in this instance.” (Docket No. 07-0549, March 26, 2008 Order at 8)

On May 17, 2013, the FCC released an order in which it determined that the forbearance from EA scripting requirements previously granted only to RBOCs should be granted to all LECs. In making its determination, the FCC concluded:

While the EA Scripting Requirement originally served an important purpose in making consumers aware of new competitive options and fostering the development of nascent competition in the provision of pre-subscribed stand-alone long distance service, we find that it is no longer necessary. First, the market has changed dramatically in the more than 25 years since the requirement was established. When the [FCC] granted forbearance from the EA Scripting Requirement for the [RBOCs] in 2007, it stated that stand-alone long distance service was becoming a fringe market, adding that stand-alone long distance competition had largely given way to competition between service bundles that included both local and long distance calling. These trends appear to have continued in the intervening years. Thus, we can see minimal if any public interest benefit in requiring ILECs to inform customers about options for stand-alone long distance service. Second, consumers today can obtain information on options for satisfying their voice communications needs, including long distance calling needs, in ways that did not exist when the Commission imposed the EA Scripting Requirement. In particular, such information is available on the Internet. Third, the EA Scripting Requirement provides consumers with information about only one competitive alternative—stand-alone long distance service. It does not reflect options involving bundled offerings, nor does it remind consumers of the availability of over-the-top VoIP services, dial-around long distance services, and calling cards. By focusing on stand-alone long distance service options, the EA Scripting Requirement is likely to distort, rather than

illuminate, competitive choices. (FCC Memorandum Opinion and Order and Report and Order and Order and Further Notice of Proposed Rulemaking and Second Further Notice of Proposed Rulemaking in WC Docket No. 12-61, WC Docket No. 10-132, WC Docket No. 09-206, WC Docket No. 08-225, WC Docket No. 08-190, WC Docket No. 07-273, WC Docket No. 07-204, WC Docket No. 07-139, WC Docket No. 07-21, WC Docket No. 05-342, CC Docket No. 02-39, CC Docket No. 00-175, and CC Docket Nos. 95-20, 98-10, released May 17, 2013, at paragraph 17.)

Petitioner believes that the same public interest reasons that led the FCC to enter its forbearance order, coupled with the importance of consistency between federal and state disclosure requirements, should lead the Commission to grant Petitioner's requested waiver of the Commission's EA scripting requirement in Illinois.

### **III. PETITIONER POSITION**

Petitioner has made its request for a waiver under Section 13-515 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which states:

Waiver of rules. A telecommunications carrier may petition for waiver of the application of a rule issued pursuant to this Act. The burden of proof in establishing the right to a waiver shall be upon the petitioner. The petition shall include a demonstration that the waiver would not harm consumers and would not impede the development or operation of a competitive market. Upon such demonstration, the Commission may waive the application of a rule, but not the application of a provision of this Act. The Commission may conduct an investigation of the petition on its own motion or at the request of a potentially affected person. If no investigation is conducted, the waiver shall be deemed granted 30 days after the petition is filed.

Petitioner contends that all of the requirements for a waiver are met.

Petitioner emphasizes that the requested waiver is limited to a requirement applicable only to customers ordering new telephone service, and would provide relief no broader than the interLATA relief already ordered by the FCC. Petitioner states that granting the petition will not impact any customer's choice of long distance provider. Customers will continue to have the right to obtain intraLATA and interLATA toll service from the provider of their choice, and Petitioner will continue to honor those choices. In addition, Petitioner will continue to comply with the requirements of Section 773.140(a), from which it does not seek a waiver.

## **A. Harm to Customers**

Petitioner maintains that customers will not be harmed by elimination of the Illinois EA scripting requirement. In fact, Petitioner opines, customers will actually benefit from its elimination. Petitioner explains that customers today are very knowledgeable concerning their telecommunications choices, and most customers know before they call which carrier they want to select for both their intraLATA and interLATA service. As a result, Petitioner contends that it is no longer necessary for customers to rely on it to identify their carrier options. Petitioner asserts that listing such options simply increases the length of the call by providing information the customer has no need to hear.

In addition, Petitioner believes that eliminating the Illinois EA scripting requirement will eliminate a potential source of customer confusion. Petitioner speculates that it could be misleading to inform customers that they have a choice of carriers for the provision of intraLATA service pursuant to Section 773.140(b) while saying nothing about the choice of carriers they have for interLATA service. A customer might infer from such silence that he or she has no choice with respect to interLATA service. Petitioner states that such an inference would be incorrect and could lead to customer confusion. Petitioner also fears that a customer might incorrectly believe that options beyond the listed wireline providers are unavailable. Petitioner notes that the FCC specifically found in its May 17, 2013 order that retention of the federal EA scripting requirement is likely to distort, rather than illuminate, competitive choices. Petitioner encourages the Commission to reach the same conclusion.

## **B. Operation of a Competitive Market**

Petitioner observes that the FCC required EA scripting when competition for toll services was first introduced in order to promote competition in the stand-alone long distance market. Petitioner asserts that the market has changed dramatically since then. The FCC concluded in its May 17, 2013 order that competition in the stand-alone long distance market has largely been replaced by competition among service bundles such that the stand-alone long distance market is a “fringe market.” The FCC also concluded that retention of the scripting requirement for incumbent LECs at the federal level did not promote the public interest and could actually be harmful to competition.

Petitioner argues that these conclusions are equally valid for Illinois. The Commission has certified many toll providers in Illinois and extensive advertising assures that consumers are aware that they have many available choices for telecommunications services. Petitioner states further that the Act has been modified significantly to recognize the increased level of competition since the Commission approved the AT&T Illinois and Verizon waiver petition. One of the changes was enactment of market regulation for competitive retail services. (See Section 13-506.2 of the Act) Petitioner elected market regulation in December 2010. As an electing provider, Petitioner's local exchange service has been deregulated. Petitioner recommends that the Commission conclude again, as it did in its 2008 EA scripting waiver order, that granting Petitioner's waiver request will not

impede the operation of the competitive market that has already developed for intrastate communications services.

### **C. Consistency between Illinois and Federal Standards**

Petitioner indicates that granting its request for a waiver will have the added benefit of maintaining consistency between federal and Illinois standards regarding scripting. In its 2008 EA scripting waiver order, the Commission recognized that harmonization of state and federal requirements is prudent and consistent with the public interest. Petitioner adds that waiver of the Illinois EA scripting requirement is also consistent with the national trend. According to Petitioner, Arkansas, Oklahoma, Kansas, and Texas eliminated their intraLATA EA scripting requirements even prior to the issuance of the FCC's 2007 order. Other states, Petitioner continues, such as Ohio and Missouri eliminated their intraLATA EA scripting requirements as a direct result of that order. Petitioner reports that the Ohio Commission found that maintaining EA scripting requirements for AT&T and Verizon on the intrastate side will effectively increase the potential for customer confusion that the FCC's 2007 order is designed to avoid. The Ohio Commission anticipated that there might be further forbearance by the FCC and adopted rules that eliminate the Ohio EA scripting requirement for any LEC that receives a federal waiver or forbearance from the EA scripting requirement. Petitioner adds that the Missouri Commission similarly recognized that modification of the Missouri EA scripting requirement is consistent with the orders of the FCC and will do no harm to the general public. Furthermore, Petitioner states that it has notified several other states that do not have formal rules requiring scripting that it intends to discontinue EA scripting. Petitioner relays that those states have not objected. Petitioner believes that the Commission should exercise its authority under Section 13-513 of the Act and waive the Illinois EA scripting requirement for Petitioner.

### **IV. STAFF POSITION**

Staff recommends that the Commission grant Petitioner the requested relief. Staff explains that granting Petitioner a waiver of Section 773.140(b) will harmonize state and federal requirements imposed on Petitioner. Furthermore, Staff states that the FCC's conclusions regarding competition are reasonable and, based upon them, the waiver will not harm competition. Staff sees no reason to believe that the grant of this waiver will harm consumers. Therefore, to the extent that the waiver will provide some benefit to Petitioner through relief of its EA scripting obligation with no harm or cost to consumers, Staff asserts that the Commission should find a waiver reasonable and consistent with the public interest and grant it.

### **V. COMMISSION CONCLUSION**

The Commission has considered Petitioner's request and Staff's response thereto. In light of the FCC's determinations on this issue and this body's prior findings concerning the RBOCs, the Commission concludes that granting the requested waiver is appropriate and reasonable. Specifically, the Commission finds that the petition sufficiently demonstrates that the waiver of Section 773.140(b) would not harm consumers and would

not impede the development or operation of a competitive market. Additionally, the Commission finds that granting the requested waiver creates an appropriate symmetry between Illinois and FCC treatment of this issue.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the Petitioner and the subject matter herein;
- (2) the recitals of fact and legal argument identified as the parties' respective positions in the prefatory portion of this Order accurately reflect the record in this proceeding;
- (3) the recitals of fact and conclusions of law reached in the Commission conclusion are supported by the record and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (4) Petitioner seeks a waiver of the requirements in Section 773.140(b) of Part 773;
- (5) the granting of the requested waiver would not harm consumers, would not impede the development or operation of a competitive market, and is consistent with past treatment of this issue by the FCC and the Commission;
- (6) Petitioner's requested waiver should be granted.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the request of Gallatin River Communications L.L.C. d/b/a CenturyLink GRC and CenturyLink Communications, LLC for a waiver of 83 Ill. Adm. Code 773.140(b) is hereby granted.

IT IS FURTHER ORDERED that the Commission retains jurisdiction over Gallatin River Communications L.L.C. d/b/a CenturyLink GRC and CenturyLink Communications, LLC and the subject matter hereof for the purpose of issuing such further order or orders as it may deem necessary.

IT IS FURTHER ORDERED that, subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 17th day of June, 2014.

(SIGNED) DOUGLAS P. SCOTT

Chairman