

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition of the Georgia Public Service	)	WC Docket No. 06-90
Commission for Declaratory Ruling And	)	
Confirmation of Just and Reasonableness	)	
Of Established Rates	)	

**COMMENTS OF EARTHLINK, INC.**

EarthLink, Inc. (“EarthLink”), by its attorneys, files these comments in support of the above-captioned Petition of the Georgia Public Service Commission (“PSC”).<sup>1</sup> It is vitally important for the Federal Communications Commission (“FCC” or “Commission”) to clarify the steps to implement the rights of competitive carriers to obtain Section 271 network elements so that the public may enjoy the benefits of competitive services. In doing so, the Commission should clarify that state public utility commissions like the Georgia PSC may set the rates for such elements, as they already do in the context of Section 251(c) network elements, so that carriers may use such access rights to promote the Congressional goals of competition that drives down prices and enhances service offerings for the American public.

EarthLink agrees with the Georgia PSC that nothing in the Federal Communications Act or the FCC’s implementing orders would preempt a state

---

<sup>1</sup> Petition of the Georgia Public Service Commission for Declaratory Ruling And Confirmation of Just and Reasonableness Of Established Rates, WC Dkt. 06-90 (April 18, 2006) (“Georgia PSC Petition”). On April 19, 2006, the FCC requested comment on the Georgia PSC Petition. *See* FCC Public Notice, DA 06-903 (April 19, 2006).

commission from setting the rates for network elements required under Section 271 of the Act. The very structure of Section 271 strongly indicates that competitive checklist network elements were intended to be an integral part of the interconnection agreement process governed by Section 252 of the Act, including the role of state commissions set forth in Section 252. For example, Section 271(c) contemplates state interconnection agreements or statement approval pursuant to Section 252 and contemplates that such interconnection agreements should include the competitive checklist requirements.

While the Section 252 TELRIC standard is obviously distinct from the Section 271 “just and reasonable” pricing standard,<sup>2</sup> in both cases the structure of the Act commands that the FCC set the pricing methodology for the network elements and then the states implement that pricing methodology through the process of state commission review and approval of interconnection agreements.

Given this interdependent structure of Sections 251, 252 and 271, it is beyond question that states may set the specific rates of Section 271 network element using the “just and reasonable” pricing standard. Moreover, nothing about the “just and reasonable” standard demands that the FCC decide the legality of every rate in every interconnection agreement. Instead, FCC precedent on “just and reasonable” pricing is quite clear and established for the states to apply. It is also a standard that is sufficiently

---

<sup>2</sup> The Commission set the less onerous “just and reasonable” pricing standard for rates charged for Section 271 network elements. *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, 18 FCC Rcd. 16978, ¶ 656 (2003), *vacated and remanded in part, aff’d in part*, United States Telecom Ass’n v. FCC, 359 F.3d 554 (D.C. Cir. 2004) (“*Triennial Review Order*”).

flexible to address the myriad of situations that are likely to arise under the different state interconnection proceedings.

For the same reason, the Georgia PSC Petition correctly points out that the Section 271 network elements may be set in the state process conducted under Section 252 for the approval of interconnection agreements. Section 252(e) clearly contemplates such an approach, by expansively declaring that “[a]ny interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission.”<sup>3</sup> The statute’s reference to “any” and to a single interconnection agreement confirms the Georgia PSC’s view that it may require parties to address both Section 271 and 251 network elements in a single interconnection agreement. Moreover, common sense and administrative economy for all parties involved would certainly compel such an approach, as well.

Finally, EarthLink notes that nothing prevents the state commission from setting rates for network elements that have been “de listed” by the FCC from the list of federal Section 251(c) network elements, including line sharing. Indeed, the FCC’s *Triennial Review Order* “reaffirm[ed] that BOCs have an independent obligation, under section 271(c)(2)(B), to provide access to certain network elements that are no longer subject to unbundling under section 251, and to do so at just and reasonable rates” and that “section 271 requires BOCs to provide unbundled access to elements not required to be unbundled under section 251 . . . .”<sup>4</sup> Further, as the Georgia PSC correctly points out, state law may also require unbundling of certain elements, and nothing in either Sections 251 or 271

---

<sup>3</sup> 47 U.S.C. § 252(e).

<sup>4</sup> *Triennial Review Order*, ¶¶ 652, 659.

indicates that state and federal unbundling requirements are at odds. Further, in the context of Section 271 unbundling, the federal statute goes further by commanding the BOCs to unbundle “[l]ocal loop transmission from the central office to the customer’s premises” and permitting competitive carrier interconnection with such loop capacity. Surely, line sharing is a form of such “loop transmission;” as the FCC has noted, line sharing is a technically feasible element part of the local loop itself. Therefore, state commissions are well within their statutory roles to order incumbent LECs to offer such de-listed elements in interconnection agreements with competing carriers pursuant to the Section 271 “just and reasonable” pricing standard.

For the foregoing reasons, the Commission should act expeditiously to confirm the role of state commissions to set the rates of Section 271 network elements, as articulated in the Georgia PSC Petition.

Respectfully submitted,

David N. Baker  
Vice President  
Law and Public Policy  
EARTHLINK, INC.  
1375 Peachtree Street, Level A  
Atlanta, GA 30309  
(404) 748-6648 tel  
(404) 892-7616 fax

By: /s/ Mark J. O'Connor  
Mark J. O'Connor  
LAMPERT & O'CONNOR, P.C.  
1750 K Street NW  
Suite 600  
Washington, DC 20006  
(202) 887-6230 tel  
(202) 887-6231 fax  
  
*Counsel for EarthLink, Inc.*

May 19, 2006