

TO BE RESCINDED

4901:1-6-09 **Competitive operations of an incumbent local exchange carrier (ILEC).**

This rule applies to all ILECs whether the ILEC is subject to a qualifying alternative regulation plan or not.

- (A) Within the ILEC's traditional service territory, the ILEC has an obligation to provide a stand-alone basic local exchange service and must offer a flat-rate usage service offering according to the approved ILEC tariff.
- (B) In order to operate outside of its traditional service territory, a large ILEC or its holding company is required to certify a separate competitive local exchange carrier (CLEC) affiliate. A CLEC affiliate of an ILEC may be certified within or outside of that ILEC's traditional service territory in accordance with rule 4901:1-6-10 of the Administrative Code. Such CLEC affiliate may offer tier 1 and/or tier 2 services.
- (C) A small ILEC or its holding company may elect to operate outside of its traditional service territory either as the out-of-territory ILEC or as a separate CLEC affiliate. A small ILEC operating outside of its service territory as the ILEC is required to maintain books and records in sufficient detail to be able to segregate revenues, expenses and investments between its incumbent jurisdictional operations and its competitive ventures. A small ILEC seeking to operate in exchanges outside of its service territory shall add new exchanges to its tariff through a thirty-day ATA filing. Such out-of-territory operations by the small ILEC will have the regulatory flexibility and carrier obligations of a CLEC operating pursuant to Chapters 4901:1-6 and 4901:1-7 of the Administrative Code.
- (D) A small ILEC may seek a waiver of the requirements contained in paragraph (E) (3) of this rule based upon a demonstration of its unique circumstances. A small ILEC must demonstrate that its operations will be conducted in such a manner so as to ensure that the current customers are protected from any negative impact of the company's venture outside of its current territory. Further, a waiver of any of the requirements of paragraph (E)(3) of this rule pertaining to a small ILEC's competitive operations shall be subject to the conditions set forth in the commission's approval of such waiver and associated financial arrangements consistent with sections 4905.40 and 4905.41 of the Revised Code.

(E) Affiliate transactions

- (1) A CLEC affiliate established by an ILEC must comply with the affiliate transaction requirements in this rule. The term affiliate means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of

these rules, the term own means to own an equity interest (or the equivalent thereof) of more than ten per cent.

(2) Safeguards

- (a) ILECs establishing separate CLECs shall maintain books, records, and accounts that are separate from the books, records, and accounts of its affiliates.
- (b) Shared employees shall appropriately record and charge their time based on fully distributed costs. "Employees" are all full-time or part-time employees of an ILEC or its affiliates, as well as consultants, independent contractors, or any other persons performing various duties or obligations on behalf of or for the ILEC or its affiliates.
- (c) "Fully distributed costs" are the sum of direct costs plus an appropriate share of indirect costs. The costs should be traceable to the books of the applicable corporate entity.
- (d) The ILEC and affiliates shall maintain all underlying affiliate transaction information for a minimum of three years.
- (e) The affiliate may contract with the ILEC for the provision of services and facilities within the ILEC traditional service territory to be used by the affiliate to compete outside the ILEC traditional service territory, pursuant to Section 251(c) of the 1996 Telecommunications Act. Such transaction must be reduced to writing and must be filed with the commission for approval pursuant to Section 252(e) of the 1996 Telecommunications Act.

(3) Financial arrangements

- (a) Any indebtedness incurred by an affiliate shall be without recourse to the ILEC.
- (b) An ILEC shall not enter into any agreement with terms under which the ILEC is obligated to commit funds to maintain the financial viability of an affiliate.
- (c) An ILEC shall not make any investment in an affiliate under any circumstances in which the ILEC would be liable for the debts and/or liabilities of the affiliate incurred as a result of actions or omissions of

an affiliate.

- (d) An ILEC shall not issue any security for the purpose of financing the acquisition, ownership, or operation of an affiliate.
- (e) An ILEC shall not assume any obligation or liability as a guarantor, endorser, surety, or otherwise in respect to any security of an affiliate.
- (f) An ILEC shall not pledge, mortgage, or use as collateral, any assets of the ILEC for the benefit of an affiliate.

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Certification

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Date

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