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Ms. Reneé J. Jenkins
Director of Administration
Secretary of the Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

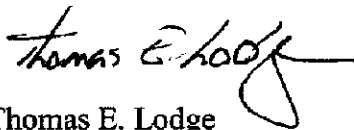
Re: In the Matter of the Commission's Investigation into the Implementation of Section 276
of the Telecommunications Act of 1996 Regarding Pay Phone Services,
Public Utilities Commission of Ohio, Case No. 96-1310-TP-COI

Dear Ms. Jenkins:

Enclosed is an original and ten (10) copies of a Memorandum of Verizon North Inc. in Opposition to Payphone Association of Ohio's Filing Captioned "Motions the Commission to Use its Regulatory Powers to Extend the New Services Test Previously Implemented in this Docket with Regarding to ATT (SBC) to Certain Independent Local Exchange Carriers, on an Emergency Basis, as a Means of Preserving Ohio's Public Communication Infrastructure and for Immediate Implementation of Interim Rates," to be filed in connection with the above-referenced matter.

Thank you for your assistance. If you have any question, please feel free to call.

Respectfully yours,



Thomas E. Lodge

cc: L. Douglas Jennings, Attorney Examiner
Parties of Record
A. Randall Vogelzang, Esq.

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's
Investigation into the Implementation of
Section 276 of the Telecommunications Act
of 1996 Regarding Pay Telephone Services.

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Case No. 96-1310-TP-COI

MEMORANDUM OF VERIZON NORTH INC.

IN OPPOSITION TO PAYPHONE ASSOCIATION OF OHIO'S FILING CAPTIONED
"MOTIONS THE COMMISSION TO USE ITS REGULATORY POWERS TO EXTEND THE
NEW SERVICES TEST PREVIOUSLY IMPLEMENTED IN THIS DOCKET WITH
REGARD TO ATT (SBC) TO CERTAIN INDEPENDENT LOCAL EXCHANGE CARRIERS,
ON AN EMERGENCY BASIS, AS A MEANS OF PRESERVING OHIO'S PUBLIC
COMMUNICATION INFRASTRUCTURE AND FOR IMMEDIATE IMPLEMENTATION
OF INTERIM RATES"

VERIZON NORTH INC. ("Verizon") hereby submits its Memorandum in Opposition to the filing of the Payphone Association of Ohio made July 18, 2007 and captioned "Motions The Commission To Use Its Regulatory Powers To Extend The New Services Test Previously Implemented In This Docket With Regard To ATT (SBC) To Certain Independent Local Exchange Carriers, On An Emergency Basis. As A Means Of Preserving Ohio's Public Communication Infrastructure And For Immediate Implementation Of Interim Rates" ("PAO'S Filing"). PAO's Filing is utterly without merit and should be dismissed.

Background

The issues that appear in PAO's Filing have already been determined by this Commission at least three times in this very docket (at PAO's instance) and by the Supreme Court of Ohio (in an appeal that PAO lost). In each instance, the issues have been determined against PAO. Inexplicably, however, PAO's Filing does not even mention these earlier decisions.¹ Accordingly, Verizon will do so:

¹ Curiously, PAO cites a 2002 decision in Case No. 99-998-TP-COI for the proposition that these issues should be decided in this docket. PAO's Filing at 4. PAO's Filing ignores that fact that the Commission thereafter did so.

- On June 17, 2002, PAO filed a “Motion to Expand Scope and Require ILECs to Comply With New Services Test,” which bears a remarkable resemblance to PAO’s Filing.² Following briefing, the Commission on November 26, 2002 issued an Entry that dismissed all carriers from this case other than SBC Ohio (now AT&T Ohio), and determined most of the remaining issues in this case.
- On December 20, 2002, the PAO filed a timely Application for Rehearing of that November 26, 2002 decision, contesting among other things the dismissal of all other carriers. Following briefing, the Commission on January 16, 2003 issued its responsive Entry on Rehearing, stating at page 11:

[T]he dismissal of the non-BOCs from this proceeding is consistent with Section 276 of the Act. . . The Commission, therefore, stands by its dismissal of non-BOCs from this proceeding.

- After an extended hearing and Commission determination of issues involving only AT&T Ohio, the PAO on October 1, 2004 sought rehearing and again contended that the Commission’s dismissal of all non-BOC telephone companies was unreasonable and unlawful. Following briefing, the Commission on October 27, 2004 issued another Entry on Rehearing that rejected PAO’s Application for Rehearing as untimely. The Commission stated at page 18:

Having fully addressed this issue in its entry on rehearing issued January 16, 2003, the Commission cannot consider PAO’s assignment of error without violating Section 4903.10, Revised Code, and Rule 4901-1-35, O.A.C.

- The PAO appealed the Commission’s October 2004 decision to the Supreme Court of Ohio. On June 28, 2006, the Court issued its decision which again (and, by all appearances, finally) rejected PAO’s efforts. *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988. The Court stated:

The PUCO’s decision to limit the proceedings was reasonable, given that the proceeding was established to implement Section 276 of the Telecommunications Act and the relevant FCC decisions, which do not apply to non-BOCs. Moreover, the PUCO had already reviewed the pay-phone rates of numerous non-BOCs and had found them in compliance with the 1996 Act. . . . Neither state nor federal law requires the application of the NST to the pay-phone rates of non-BOCs. When a statute does not prescribe a particular formula, the PUCO is vested with broad discretion. *Columbus v. Pub. Util. Comm.* (1984), 10 Ohio St.3d 23, 24, 10 OBR 175, 460 N.E.2d 1117. The PUCO has determined that further review of non-BOC rates is not required at this time. That decision was lawful and reasonable. We reject the fifth claimed error.

Payphone Assn. v. Pub. Util. Comm., 109 Ohio St.3d 453, 459.

² Among other things, the June 17, 2002 Motion at page 5 spoke to the needs of low-income Ohioans, the public safety and the diminution of payphone lines statewide. Compare PAO Filing at 3.

Argument

Enough is enough. The PAO has sought to impose the New Services Test on Ohio's non-BOC telephone companies over and over again, and each time it has been rejected. This repeated re-litigation of the same issue borders on abuse of process. The issue is resolved and PAO's Filing should be dismissed.

1. PAO's Filing is Barred by Res Judicata.

Fundamental principles of issue preclusion bar PAO's Filing. As described in *Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St.3d 9, 10, doctrines of res judicata and collateral estoppel "operate to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." The doctrines apply equally to administrative litigation. *Superior's Brand v. Lindley* (1980), 62 Ohio St.2d 133.

Here, the PAO is attempting to relitigate an issue that was passed upon by the Supreme Court of Ohio in an appeal that PAO initiated. Before this Commission, PAO has raised the same issues no less than three times and has lost every time. PAO's Filing should be dismissed.

2. PAO's Filing Is Again Untimely.

Revised Code §4903.10 provides in part:

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission. (emphasis supplied).³

³ See also Ohio Admin Code §4901-1-35(A).

While PAO's Filing does not so much as acknowledge prior decisions in this case, PAO's Filing amounts to an effort to rehear those prior orders. For purposes of Revised Code §4903.10, the "order" of which PAO ultimately complains is either the Commission's Entry of November 26, 2002 (which dismissed the non-BOC parties) or the Commission's Entry on Rehearing of January 13, 2003 (which reaffirmed that decision over PAO's objection) or the Commission's Entry on Rehearing of October 27, 2004. Under the plain words of the statute and ample Ohio law, PAO's Filing in this respect is untimely and must be rejected. See, e.g. Greer v. Pub. Util. Comm (1961); Dover v. Pub. Util. Comm. (1933), 126 Ohio St. 438.

3. PAO'S Filing Neither Provides Nor Promises Additional Evidence.

PAO's Filing is not only lacking in legal foundation – it also relies exclusively on vague and self-serving factual statements concerning payphones, their purported role in society⁴ and their purported economics.⁵ Nowhere does PAO's Filing supply any concrete evidence to support its claims, and nowhere does PAO's Filing even promise to deliver any. As a result, the Record now before the Commission is the same that existed when it decided – three times over – that PAO's position has no merit. PAO's Filing should be dismissed.

4. The Commission Properly Dismissed All Non-BOC Carriers From This Proceeding, and The Supreme Court Properly Confirmed As Much.

The PAO Application seeks to impose the New Service Test and new pricing on several non-BOC carriers, including Verizon.⁶ It's sole rationale for doing so is its allegation that "the NST was developed . . .to establish appropriate pricing in the absence of market forces." PAO Filing at 3. Yet, PAO ignores the fact that Congress decided not to impose the New Services

⁴ A typical example is this sentence fragment: "Available to all citizens, of all economic levels, without deposits, equipment requirements or pre-arrangements." PAO's Filing at 3.

⁵ E.g. "[Payphones] are subject to monopoly pricing markups. This is exactly the type of situation that the NST was designed to correct." *Id.*

⁶ Also targeted are Cincinnati Bell, Ohio's Windstream affiliates, Embarq, and CenturyTel.

Test on the intrastate rates of non-BOCS. As the FCC has stated, 47 U.S.C. §276(b)(1)(b) does not apply the New Services Test to non-BOC LECs:

[W]e do not find that Congress has expressed with the requisite clarity its intention that the [FCC] exercise jurisdiction over the intrastate payphone prices of non-BOC LECs. Since [Section 276(b)(1)(c) empowers] us to apply the New Services Test to payphone line rates and grant us authority only over BOCs, we do not have a Congressional grant of jurisdiction over non-BOC LEC line rates.⁷

Thus, the Commission's multiple decisions to excuse Verizon and the other non-BOC carriers from this case were logical, lawful and proper. The Supreme Court of Ohio concurred: "The PUCO has determined that further review of non-BOC rates is not required at this time. That decision was lawful and reasonable." *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 459.

Finally, the PAO has provided no other reason why the Commission should reverse these decisions. Its allegations concerning the need to "save" payphones are unsubstantiated and dramatically self-interested. Indeed, nothing in PAO's Filing even suggests that application of the New Services Test would result in the "pricing relief" that would "save" them. Certainly, even if the Commission had not previously rejected these efforts, the Commission must not take the costly step of ordering cost studies on the flimsy grounds set forth in PAO's Filing.

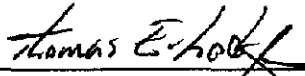
⁷ In the Matter of Wisconsin Public Service Commission, Bureau CPD No. 00-01, FCC 02-25, Memorandum Opinion and Order (January 31, 2002)("Wisconsin Order") at ¶ 42.

Conclusion

For the foregoing reasons, Verizon North Inc. submits that PAO's Filing is utterly without merit and untimely and should be dismissed.

Respectfully submitted,

Verizon North Inc.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Memorandum in Opposition were served upon the following, by ordinary U.S. mail, postage prepaid, this 28 day of August, 2007.


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