BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
The Ohio Bell Telephone Company d/b/a AT&T Ohio	)	
For Approval of an Alternative Form of	)	
Regulation of Basic Local Exchange	)	Case No. 07-1312-TP-BLS
And other Tier 1 Services Pursuant to	)	
Chapter 4901:1-4, Ohio Administrative	)	
Code.	)	

AT&T OHIO'S MEMORANDUM CONTRA THE OHIO CONSUMERS' COUNSEL'S OPPOSITION

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THE OHIO CONSUMERS' COUNSEL'S OPPOSITION

Introduction

AT&T Ohio[1], by its attorneys and pursuant to the Entry adopted on January 17, 2008, opposes the objections to its application filed by the Ohio Consumers' Counsel ("OCC") on February 11, 2008. The OCC's filing repeats the same arguments it raised against the Company's previous applications in Case Nos. 06-1013-TP-BLS and 07-259-TP-BLS. Those arguments were properly rejected by the Commission in its orders in those cases and should be rejected again here. OCC raises no new arguments here that would form a proper basis for the Commission to revisit the policy decisions it made in adopting its rules implementing the enabling legislation or its decisions in the previous cases filed under those rules.[2]

And, despite all of OCC's rhetoric, it is clear that the Company's application should be approved in its entirety because the Company complied with the applicable rules and has met its burden of proof.[3] Apart from the fact of such compliance, there are other public policy reasons that support the granting of the application: 1) the Company has not increased, but has substantially reduced, the rates for residential basic local exchange service ("BLES") since 1985; 2) the competitive marketplace and the current limitations on rate increases set forth in the rules will keep rates in check; and 3) there are many competitors and alternative providers from which customers can purchase services.

[1] The Ohio Bell Telephone Company uses the name AT&T Ohio.
[2] OCC acknowledges the repetitive nature of its arguments. OCC, p. 7, note 19.
[3] The rules governing the Company's application were adopted by the Commission in Case No. 05-1305-TP-ORD (hereinafter referred to as "05-1305" or "the rules docket"). AT&T Ohio's first application under those rules was approved in part in Case No. 06-1013-TP-BLS (hereinafter referred to as "06-1013"). Its second application was approved in part in Case No. 07-259-TP-BLS (hereinafter referred to as "07-259"). AT&T Ohio requests that the Commission take administrative notice of its entire record in 05-1305, 06-1013, and 07-259.

At bottom, OCC argues that there is insufficient competition to justify regulatory relief for BLES. The technological, marketplace, and legal developments over the past ten years, advances made in other states and countries to address competition, and common sense all demonstrate otherwise. These factors also led the General Assembly to enact the enabling legislation that is now being implemented. In order for OCC to achieve its objective, it would have the Commission so narrowly define BLES (and thus the competitors and alternative providers that provide it) and would subject it to such unreasonably rigid tests that no ILEC would qualify for any regulatory relief. That is not what the General Assembly intended in enacting the enabling legislation, and it is not what the Commission intended in adopting its rules to implement that legislation.

It should be clear - - yet again - - that OCC's many arguments against AT&T Ohio's application represent an effort to undo both the work done by the General Assembly in enacting the enabling legislation and the work the Commission has done to implement it, both with substantial input from OCC and extensive hearings.[4] Contrary to OCC's beliefs, the Commission carefully and faithfully implemented that legislation in the rules it adopted after exhaustive consideration of its Staff's proposal, input from various parties (including OCC), and extensive local public hearings. The rules also passed scrutiny in the legislative rule review process. In turn, the Company has fully complied with the requirements of the rules the Commission adopted in preparing and filing its application. The Company's application satisfies

[4] Any failure by the Company to respond to an argument raised by OCC should not be interpreted as its agreement with the position expressed.

the competitive tests identified in the rules and, therefore, meets the requirements of the statute for obtaining rate relief for BLES.[5]

OCC again attempts to rewrite the rules to its liking and then proceeds to judge AT&T Ohio's application using its version of the rules. While OCC asserts that Ms. Hardie and Ms. Tanner "demonstrate their understanding of the statute" (OCC, p. 10, note 23), those affiants merely updated the case-specific information in the 06-1013 affidavits of Dr. Roycroft and Mr. Williams while continuing to rewrite the statute and the rules to their liking. Using that approach, it is no wonder they conclude that AT&T Ohio failed to meet the burden of proof in all eleven exchanges included in its application. OCC's narrow view of BLES and its extreme self-serving interpretations of the statute and the rules would frustrate the goals of the General Assembly and the Commission in reforming the regulation of BLES to meet drastically changed marketplace conditions. As they have been before, those narrow views and extreme interpretations must be rejected and the Company's application should be approved in its entirety. In so doing, the Commission should apply the rules it carefully crafted based on the evidence of compliance as filed by the Company, and reject the irrational and unsupported interpretations and outcomes proposed by OCC. The arguments against the rules were rejected by the Commission in 06-1013, where it concluded that no new arguments had been raised for the Commission's consideration. 06-1013, Entry on Rehearing, February 14, 2007, p. 3. The Commission followed the same correct path in 07-259. Likewise, OCC raises no new arguments in this case.

[5] OCC criticizes the inclusion of exchanges that were previously found to not meet the competitive tests, ignoring the fact that they now meet the applicable test based on the more recent data relied upon in this application. OCC, p. 5, notes 13-14.

Among OCC's many absurd propositions - - and one that the Commission already rejected in its consideration and adoption of rules to implement the enabling legislation - - is its insistence that, essentially, there be "perfect substitutes" for BLES in order to justify the relaxed regulation provided for in the rules. In its reply comments in the rules docket, AT&T Ohio responded as follows:

> Some insist that competition means that competitors must offer a "perfect substitute" to BLES in order for the ILEC to meet the competitive tests. Competition, according to economic theory, causes firms to develop new products, services, and technologies as substitutes for the original product. Such substitutes do not have to be "perfect substitutes" in order for competition to flourish. Rather, they give consumers greater selection and better products instead of more of the exact same product. A good is a perfect substitute for another only if it can be used in exactly the same way, at exactly the same cost, and with exactly the same quality of outcome; that is, when there is no particular incentive for a customer to prefer one over the other. See, Wikipedia, 2005 Answers.com 16 Dec. 2005. http://www.answers.com/topic/substitute-good). There are relatively few perfect substitutes for any given product in any market. Much more common is for goods to be imperfect substitutes for one another. Such is true in the telecommunications marketplace. There are many substitutes for BLES and consumers are increasingly selecting these alternatives.

05-1305, AT&T Ohio Reply Comments, December 22, 2005, p. 7. The Commission agreed with this approach, holding as follows:

> In reviewing the record, the Commission finds that some of the comments filed, as well as testimony from several customers at the local public hearings, indicate that consumers' perception of BLES is changing. More customers are substituting their traditional BLES with competitive service offered by alternative providers such as wireline CLECs, wireless, VoIP and cable telephony providers (Columbus Tr. at 27, 39; Cincinnati Tr. at 20, 33, 37, 39, 48; AT&T Initial Comments at 15-17). Although the products offered by those alternative providers may not be exactly the same as the ILECs' BLES offerings, those customers view them as substitutes for the ILECs' BLES. Thus, the alternative providers compete against the ILECs' provision of BLES. We also note that Section 4927.03(A), Revised Code, compels the examination of whether customers have reasonably available alternatives to BLES. *The law does not restrict the "analysis of competition" and "reasonably available alternatives" to competitive products that are exactly like BLES.* Indeed, the law provides that the Commission consider the ability of providers to make functionally equivalent or substitute services readily available to consumers (emphasis added). Whether a product substitutes for another product does not turn on whether the product is exactly the same. Clearly, customers that leave an ILECs' BLES offering to subscribe to another alternative provider's bundled services offering view such bundled services offering as a reasonable alternative service, and a substitute to the ILECs' BLES. Additionally, customers which subscribe to these bundled offerings

> are by definition BLES customers. Accordingly, we find that, with technology advancements, alternative providers such as wireline CLECs, wireless, VoIP and cable telephony providers are relevant to our consideration in determining whether an ILEC is subject to competition or customers have reasonably available alternatives to the ILECs' BLES offering at competitive rates, terms and conditions.

05-1305, Opinion and Order, March 7, 2006, p. 25 (emphasis added). In the case involving the Company's first application filed under those rules, the Commission stated:

> Further, although each substitute service to BLES will not attract (or meet the needs of) an entire LEC customer base, this does not exclude the substitute service as a reasonable alternative to BLES.

06-1013, Entry on Rehearing, February 14, 2007, p. 14 (citation omitted).

While OCC would continue to divert the Commission's attention to a reexamination of the statute and the rules, there is no good reason to rehash issues that were already considered in the rules docket, in 06-1013, and in 07-259. The only issue in this case is whether AT&T Ohio's application complies with the rules. The validity of the rules was established in 05-1305 and was reaffirmed in both 06-1013 and 07-259 and in the Cincinnati Bell and Embarq cases, Case Nos. 06-1002-TP-BLS and 07-760-TP-BLS.

OCC contends that AT&T Ohio is required to prove that there are no barriers to entry for carriers to provide stand-alone BLES in the eleven exchanges, and that its stand-alone BLES is subject to competition or that stand-alone BLES customers have reasonably available alternatives to stand-alone BLES. In these arguments, OCC not only embellishes the statute with additional self-serving verbiage, but also completely ignores the rules established in 05-1305. Those rules established objective tests that, if satisfied, demonstrate compliance with the underlying statutory requirements. In other words, the four established competitive tests were designed such that any ILEC demonstrating compliance, on an exchange-by-exchange basis,

with one of the tests is *deemed* to have established compliance with the provisions in the statute cited by OCC.[6] On this issue, the Commission previously held as follows:

> By contrast, in the current rulemaking under H.B. 218, we are creating an alternative regulatory framework applicable to BLES and imposing additional competitive market tests to be applied on a granular level. The competitive market tests in Rule 4901:1-4-10(C), O.A.C., are new and go well beyond the competitive findings in the 00-1532 rulemaking. The new competitive market tests are sufficiently rigorous and granular to support a finding that, consistent with H.B. 218, there are reasonably available alternatives to BLES in the affected exchange or that BLES is subject to competition in the affected exchange; those same demanding test criteria also demonstrate that no barriers to entry exist for alternative BLES providers in the affected exchange. Accordingly, the Commission is satisfied that the competitive market tests in our rule satisfy all of the requirements found in Section 4927.03(A), Revised Code.

05-1305, Entry on Rehearing, May 3, 2006, p. 19. In the case involving the Company's first application under those rules, the Commission reaffirmed that the intent of the tests is to demonstrate compliance with the statutory criteria. 06-1013, Entry on Rehearing, February 14, 2007, p. 3.

OCC's disagreement notwithstanding, the Commission was charged with adopting rules to implement the BLES alternative regulation statute and the competitive tests reflect the policy choices made by the Commission as to how to do so. The competitive tests established by the Commission and scrutinized in the legislative rule review process avoid the need for the applicant to demonstrate compliance with each aspect of the statutory criteria by creating objective criteria to be met by an applicant. This approach was reasonable and proper. OCC would discard the objective tests so it can endlessly argue subjective issues. That is counter-productive and would defeat the General Assembly's intent in enacting the enabling legislation and the Commission's purpose in adopting the rules implementing that legislation.

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[6] "If the applicant can demonstrate that at least one of the following competitive market tests is satisfied in a telephone exchange area, the applicant will be deemed to have met the statutory criteria found in division (A) of section 4927.03 of the Revised Code for BLES and other tier one services in that telephone exchange area." Ohio Admin. Code § 4901:1-4-10(C). The rule also provides that these competitive market tests do not preclude an ILEC from proposing to demonstrate that the statutory criteria are satisfied through an alternative competitive market test.

OCC criticizes some of the Company's discovery responses (OCC, p. 2, note 5 and p. 19, note 62) and claims that the Company's application is vague (OCC, p. 17). None of these matters were pursued by OCC in discovery, though. Strategically, OCC would rather complain about vagueness than offer any valid substantive criticism.

Lastly, it should be noted that OCC did not request a hearing pursuant to Ohio Admin. Code 4910:1-4-09(G).[7] No hearing should be held in this case.

The Rules Comply With The Statute

OCC argues extensively about what the rules should say, in its view, in order to carry out the language of the statute. *See, e.g.*, OCC, pp. 3-4, 9, 11-17, 46-48. These arguments were heard before and rejected in the rules docket, 06-1013, 07-259, or all three. OCC's opposition is based on its own proposed criteria which are not part of the statute or the rules. Its opposition fails to demonstrate any legitimate flaws in AT&T Ohio's application.

OCC was a leading opponent of the enabling legislation and, as part of the Consumer Groups, of the Staff's proposal to implement that legislation. After the initial rules were adopted, the Consumer Groups filed an extensive application for rehearing of the initial rules. That application was granted in part, and some of the Consumer Groups' suggestions were adopted in the final rules. However, many of the issues raised and positions advocated by the Consumer Groups were properly rejected. Now, when the adopted rules are being implemented and the Commission is considering the third of the Company's applications filed under them,

[7] OCC argues that "extraordinary circumstances exist that necessitate a hearing" (OCC, pp. 6-7) but it failed to formally request a hearing.

OCC revives many of the same issues and advocates many of the same positions that were rejected in the rules docket. In some cases, OCC's arguments assume that its positions were adopted and are the law, when in fact they were not and are not.

In discussing the applicable law, OCC is wedded to the notion of stand-alone BLES as the only appropriate comparison for purposes of obtaining relief under the statute. OCC, pp. 7-8. OCC argues that because BLES, when it is part of a bundle, has already been granted alternative regulation, the analysis here must be limited to competition for stand-alone BLES. OCC, pp. 12-14. Ironically, OCC questions how the Commission granted alternative regulation to bundled BLES prior to the enactment of H. B. 218 in its 00-1532 docket. OCC, p. 12.[8]

The lynchpin of OCC's arguments here is the claim that the focus must be on stand-alone BLES and that such service must be reviewed in isolation of all else. OCC, pp. 7-10, 12-14. OCC argues that because BLES, when offered as part of a package, was addressed in the rules adopted in 00-1532, this means that stand-alone BLES must be individually analyzed here. OCC, p. 13. This is the foundation for OCC's absurd conclusion that there are no "real

[8] It is noteworthy that OCC did not challenge that classification in 00-1532. The Commission explained its approach to bundles as follows:

> By suggesting that there was no reason to enact H.B. 218 because the Commission's 00-1532 orders already found competition exists for BLES, the Consumer Groups inaccurately portray our 00-1532 decision and the implications of H.B. 218's subsequent enactment. Prior to enactment of H.B. 218, BLES was beyond the scope of alternative regulation under Section 4927.03, Revised Code. Our decision in 00-1532 did not deregulate stand-alone BLES or otherwise provide regulatory exemptions applicable to stand-alone BLES. Rather, in 00-1532, we made certain competitive findings applicable largely to discretionary services that extended to the entire state of Ohio. For example, we found that bundled service packages offered by the ILEC (including those containing BLES) are competitive with bundled service packages offered by CLECs. Therefore, pursuant to our Order in 00-1532, ILECs received relief limited to bundled service packages.

05-1305, Entry on Rehearing, May 3, 2006, p. 19.

alternatives" to stand-alone BLES. OCC, p. 10. OCC caps these arguments with the claim that the tests do not meet the requirements of the statute. OCC, pp. 11, 14, 46.

The major flaw in the OCC's argument in this regard is that the statute does not define "stand-alone" BLES, nor does it require stand-alone BLES to be offered by any competing carrier. The statute requires the commission to *consider* "the *ability* of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions." R. C. § 4927.03(A)(2) (emphasis added). The statute does not call for perfect substitutes for stand-alone BLES. Rather, it allows non-traditional alternatives to be considered.

All LECs are required to provide BLES. Ohio Admin. Code § 4901:1-6-01(K). That rule defines "local exchange carrier" as any facilities-based and nonfacilities-based ILEC and CLEC that provides basic local exchange services to consumers on a common carrier basis. BLES is defined as:

> (1) End user access to and usage of telephone company-provided services that enable a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area, and that consist of the following:
> (a) Local dial tone service;
> (b) Touch tone dialing service;
> (c) Access to and usage of 9-1-1 services, where such services are available;
> (d) Access to operator services and directory assistance;
> (e) Provision of a telephone directory and a listing in that directory;
> (f) Per call, caller identification blocking services;
> (g) Access to telecommunications relay service; and
> (h) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.
> (2) Carrier access to and usage of telephone company-provided facilities that enable end user customers originating or receiving voice grade, data, or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks.

R. C. § 4927.01(A). Under a Commission rule, only the ILECs have an obligation to provide a stand-alone basic local exchange service within their traditional service territory. Ohio Admin.

Code § 4901:1-6-09(A).[9] The disparate treatment that the rules extend to ILECs and CLECs is an important consideration in implementing the BLES alternative regulation statute relative to determining the need for alternate providers to make functionally equivalent or substitute services readily available. As there is no requirement for CLECs or any of the intermodal competitors to offer "stand alone" BLES, few, if any, do. The Commission was well aware of this fact when it devised the competitive tests. To have adopted rules using OCC's absurdly narrow definition of the term "functionally equivalent" would have been contrary to the legislative intent. It is self-evident that the services offered by CLECs and the various alternative providers are not only functionally equivalent to BLES but are also substitutes for BLES.

The Commission has addressed this issue before and decided it properly. In so doing, it said:

> Another objection to the staff proposed competitive market tests is raised by the Consumer Groups and AARP. They argue that the criteria included in these tests could include CLECs' lines as part of a bundled service or high-speed Internet service, which are not BLES-only lines, and accordingly fails to measure effective competition for BLES. As previously stated, H.B. 218 does not restrict the "analysis of competition" and "reasonable available alternatives" to competitive products that are exactly like BLES. We found in the prior section of this order that alternative providers such as wireline CLECs, wireless, VoIP and cable telephone companies are relevant to our consideration in determining whether an ILEC is subject to competition or customers have reasonable available alternatives. Accordingly, we find the staff's proposed criteria of using CLEC-provided residential access lines to be reasonable regardless of whether the customer is subscribing to BLES only or bundled services.

05-1305, Opinion and Order, March 7, 2006, p. 34. More recently, the Commission stated:

> Further, as we discussed in the 05-1305 Opinion and Order, more customers are substituting their traditional BLES with competitive services offered by alternative providers such as CLECs, wireless carriers, Voice over Internet Protocol (VoIP) and cable telephony providers (05-1305 Opinion and Order at 25). We recognize that, although the products offered by those alternative providers may not be exactly the same

[9] This requirement previously appeared in Ohio Admin. Code § 4901:1-6-09(M)(2), repealed effective September 18, 2007.

as the ILEC's BLES offerings, those former ILEC customers viewed them as substitutes for the ILEC's BLES.

06-1013, Entry on Rehearing, February 14, 2007, p. 10.

In addition, the disparate treatment that results from the rules does not alter the analysis whether BLES service is subject to competition or whether BLES customers have reasonably available alternatives under the statutory tests. All CLECs *must* provide BLES and it is indisputable that it is the CLECs' BLES offerings that are purchased in lieu of, and therefore compete with, the BLES offerings of the ILECs in whose exchanges the CLECs operate. These facts - - and the fact that intermodal competitors do not offer stand-alone BLES but are nevertheless very successful at attracting customers- - serve to rebut the OCC's claim that BLES must be analyzed on a stand-alone basis.

On a related issue, OCC questions how many BLES-only and BLES plus basic caller ID-only customers AT&T Ohio has in the target exchanges. OCC, p. 2, note 5. It criticizes the Company for not answering that question in discovery, but fails to mention how it is relevant to this case and that it did not challenge the Company's lack of a response or seek a motion to compel.[10] The Commission has already assessed the possible impact of BLES alternative regulation, has determined that it is in the public interest, and that it can be achieved on an automatic basis under the objective tests the Commission has developed. This is one of the many areas in which OCC would impose additional requirements on an applicant that do not appear in the rules.

[10] The Company fully cooperated in the extensive discovery undertaken by OCC in this case. The Company does not compile a report identifying these categories of customers and therefore did not provide one in discovery.

The Commission probably did not anticipate that its use of the common term "presence" in both Tests 3 and 4 would be such a lightning rod. OCC argues extensively about what constitutes a "presence" of other providers for purposes of those tests. *See, e.g.*, OCC, pp. 22-23, 32, 36, 40, 42, 44, 45, 47, 52-57. OCC would impose ubiquitous coverage and "active marketing" requirements on the other providers in order for them to qualify as having a "presence" in a given exchange. OCC, pp. 5, 24. It would also impose an unspecified minimum on the number of customers served in order to qualify under the applicable rule with a "presence." OCC, p. 44. Ms. Tanner argues that serving a "handful of customers" does not qualify. OCC, p. 23, citing Tanner at ¶ 58.

The Commission need not revisit every statutory factor in order to determine if a competitor has a "presence." "Presence" is a simple English word that has a common meaning and is easily understood. The dictionary defines it as "the fact or condition of being present."[11] In this context, it means the carrier is present in the market, providing its service to customers. A carrier is either present or absent. All of the alternative providers in AT&T Ohio's application are providing service and have residential customers. OCC does not refute these facts other than through a misinterpretation of supporting data included in AT&T Ohio's application. Nothing in the statute or the Commission's rules requires that each and every residential customer within a given exchange have five or more alternative providers available to them. Even so, the fact is that resellers and collocated CLECs have access to each and every residential customer in a given wire center. It is also the case that VoIP providers and wireless carriers are not constrained by exchange boundaries. The rules reflect these circumstances.

[11] http://www.m-w.com/dictionary/presence

Moreover, nothing in the rules requires that all of the alternative providers offer a perfect substitute for stand-alone BLES in a ubiquitous manner throughout an exchange. Further, it would be unreasonable to require any applicant to prove that each and every one of its competitors offers service to each and every customer residing in an exchange; the standard must be interpreted in a reasonable manner based on the information that would be available to an applicant. The Commission recognized these facts in denying the Consumer Groups' application for rehearing in 06-1013 on the "presence" argument. 06-1013, Entry on Rehearing, February 14, 2007, pp. 11-12. Here, too, the Commission should reject OCC's approach to determining whether an alternative provider has a "presence" in a given exchange.

Competitive Test 4 Meets The Statutory Requirement

OCC generally argues that the competitive tests set forth in the rules do not meet the terms of the statute. OCC, pp. 11, 14, 46. The Commission has heard and rejected these arguments more than once. Nonetheless, OCC continues its attack by arguing that competitive Test 4 does not meet the statutory requirements. OCC, p. 14. It argues that neither prong of Test 4 "addresses market power" nor "effectively measures the lack of barriers to entry." OCC, p. 14. Here again, OCC suggests that the analysis must focus on the provision of stand-alone BLES. OCC, p. 14.

These arguments were already considered and rejected by the Commission in the rules docket and in the previous BLES alternative regulation cases. *See, e.g.*, 06-1013, Entry on Rehearing, February 14, 2007, pp. 17-18. In the rules docket, the Commission explained:

> Consumer Groups' assignment of error relative to the Commission's treatment of the issue of "barriers to entry" and the established criteria of Rule 4901:1-4-10(C), O.A.C., is denied. In reaching this decision, the Commission finds Consumer Groups' arguments

appear to be premised on the belief that in order for an ILEC to satisfy H.B. 218, any condition that makes entry more difficult must be removed for all potential competitors. The Commission finds such an interpretation to be unreasonable and impractical. Realistically, all companies are confronted with at least some conditions that make entry difficult. Therefore, the primary issue becomes an analysis of whether these difficulties can be overcome by some competitors or whether market conditions involve true barriers to entry that prevent or significantly impede entry beyond those risks and costs normally associated with market entry. If H.B. 218 stands for the proposition that all conditions that make entry difficult have to be eliminated for all potential competitors, such an interpretation will create an insurmountable burden of proof for an ILEC to satisfy. Further, the Commission points out that, while the legislature provided general guidance to the Commission regarding the establishment of alternative BLES regulation, the ultimate decision-making authority regarding the implementation of this authority was delegated to the Commission.

As we explained in our Opinion and Order, the intent of the competitive market tests set forth in Rule 4901:10-4-10(C), O.A.C., is to require the applicant to demonstrate that that *[sic]* BLES is subject to competition or that reasonably available alternatives exist and that no barriers to entry exist for BLES. Inasmuch as the telecommunications market is continuously evolving, the Commission cannot pigeonhole a competitive market analysis via one specific test. Rather, the Commission, in its rules, focused on specific factors demonstrating for residential BLES customers that all of the statutory criteria found in Section 4927.03(A), Revised Code, have been satisfied. For example, to the extent that an ILEC can demonstrate that it has lost a "real" percentage of its residential customer base and that there are competitive alternatives available to BLES customers, the Commission is satisfied that barriers to entry are not restricting the ability of competitors to compete. As part of its analysis, the Commission previously noted that every customer subscribing to a bundled service which includes BLES is, by definition, also a BLES customer. Similarly, contrary to the Consumer Groups' argument, the test components measuring access line losses do measure BLES competition because each access line customer previously purchased BLES from the ILEC. In this regard, Consumer Groups' position also ignores Section 4927.03(A)(2)(c), Revised Code, which requires the Commission to consider the availability of "functionally equivalent or substitute services." Further, as additional protection, the Commission's Rule 4901:1-4-10(C), O.A.C., requires that an ILEC satisfy both criteria of a single competitive market test rather than just one of the established criteria or the other.

05-1305, Entry on Rehearing, May 3, 2006, pp. 17-19.

Competitive Test 3 Meets The Statutory Requirement

Next, OCC once again argues that Test 3 does not result in the showings required by the statute. OCC, pp. 11, 46. But the Commission was very careful to implement competitive

tests that fulfill the requirements of the enabling law. OCC begrudgingly acknowledges that this test comes "closer to meeting the statutory criteria" but argues that it still allows BLES alternative regulation where the statute is not met. OCC, p. 46. These arguments, too, have already been considered by the Commission and rejected, as noted above.

The Competitive Tests Constitute The Necessary Showing
That There Are No Barriers To Entry

In adopting the rules, the Commission was mindful of the statutory requirement that, when it is considering the exemptions or alternative regulatory requirements with respect to BLES under R. C. § 4927.03(A)(1), it must "find that there are no barriers to entry." R. C. § 4927.03(A)(3). The meaning of this requirement and how it should be implemented were issues that were thoroughly vetted - - and resolved - - in 05-1305 and again in 06-1013 and in 07-259. The rule adopted by the Commission specifically provides that "(i)f the applicant can demonstrate that at least one of the following competitive market tests is satisfied in a telephone exchange area, the applicant *will be deemed to have met the statutory criteria found in division (A) of section 4927.03 of the Revised Code* for BLES and other tier one services in that telephone exchange area." Ohio Admin. Code § 4901:1-4-10(C) (emphasis added). The statutory criteria referred to in that rule include the "no barriers to entry" criterion. The rules do not call for - - and the Company's application therefore did not need to propose - - a separate analysis of the "no barriers to entry" issue. OCC proposes such a separate analysis because it wants the Company to fail that test. But the Commission properly addressed that issue in the rules and provided an appropriate "safe harbor" if at least one of the competitive tests is satisfied in a telephone exchange area. OCC acknowledges that the Commission adopted the 05-1305 rules under its statutory authority to do so. OCC, p. 3, note 10, citing R. C. § 4927.03(D).

There is no requirement for an ILEC that uses any of the established competitive market tests to separately prove "no barriers to entry." The Commission determined in 05-1305 that the presence of multiple competitors in a market was sufficient evidence that there were no such barriers. In 06-1013, it elaborated on this point, stating as follows:

> We previously determined that satisfying the established criteria of the competitive market tests (e.g., the required presence of unaffiliated facilities-based alternative providers combined with the requisite ILEC loss of residential access lines) adequately establishes that there are no barriers to entry, thus satisfying Section 4927.03(A), Revised Code (06-1013 Opinion and Order at 8, 9, 12; 05-1305 Entry on Rehearing at 18).

06-1013, Entry on Rehearing, February 14, 2007, p. 18. It is self-evident from the application of Test 3 or Test 4 that there are no barriers to entry, else those providers would not be in business. Both tests come with a built-in satisfaction of the "no barriers to entry" requirement.[12] There is no requirement that the Commission investigate the market further, once the test has been satisfied. Rather, the rule provides that each of the four competitive tests, by definition, meet the "no barriers to entry" criterion and the other statutory criteria. In contrast, an alternative company-specific competitive market test proposed by an applicant would not enjoy this safe harbor.

OCC's Criticisms Of The Company's Application Are Unfounded

OCC argues that the Company's application exhibits "obfuscation and intentional vagueness." OCC, p. 17. It apparently seeks more information than the Company provided in its proof. OCC, p. 19, note 62. In this criticism, OCC simply does not like what that information demonstrates; it cannot reasonably complain about the level of detail the Company provided in proving its case. In this regard, it should be noted that the Company filed an extensive

[12] Ohio Admin. Code § 4901:1-4-10(C).

application with appropriate information and data, and responded to extensive discovery from OCC.

AT&T Ohio's Application Complies With The Statute And The Rules

OCC's misinterpretations of the statute and the rules are almost too numerous to mention. Most of these misinterpretations drive toward OCC's desired conclusions that 1) the rules do not properly implement the statute; or 2) that the Company's application does not properly meet the requirements of OCC's desired interpretation of the rules or the statute.

As noted above, the rules provide that satisfaction of the competitive market tests suffices in meeting the statutory criteria.[13] Thus, by providing extensive evidence that it meets one of the competitive tests in each of the exchanges included in its application, AT&T Ohio has met the requirements of the statute. Despite this fact, AT&T Ohio provides the following responses to the OCC's claims that the statutory tests have not been met.

Much of the advocacy set forth by OCC is directed toward establishing that AT&T Ohio's application does not meet the three criteria of the statute. The statute requires the Commission to find that the proposed alternative regulation is in the public interest and that either of the following conditions exists:

> The telephone company or companies are subject to competition with respect to such public telecommunications service;
>
> OR
>
> The customers of such public telecommunications service have reasonably available alternatives.

[13] Ohio Admin. Code § 4901:1-4-10(C).

R. C. § 4927.03(A)(1)(a)-(b). Additionally, with respect to basic local exchange service, the commission must additionally find that there are no barriers to entry. R. C. § 4927.03(A)(3). With substantial evidence in its application, AT&T Ohio demonstrated that:

- Many CLECs have Commission-approved interconnection agreements with AT&T Ohio
- Many CLECs have Commission-approved tariffs for providing BLES
- Many CLECs are serving residential customers via their own facilities (including but not limited to UNE-P, UNEs, and/or LWC)
- Many CLECs are serving residential customers via resale
- Many customers have ported their numbers to CLECs
- Many customers have ported their numbers to wireless providers
- Many customers have ported their numbers to VoIP providers
- AT&T Ohio's retail residential line quantities have significantly decreased
- Alternative providers have significant residential market share

Given all these facts, OCC's arguments that AT&T Ohio has not met the statutory criteria must fail.

Moreover, on the issue whether there are barriers to entry in AT&T Ohio's exchanges, there is an elephant in the room. The elephant, which OCC has again conveniently chosen to ignore, is AT&T Ohio's state- and federally-sanctioned entry into the interLATA long distance market. That was achieved over four years ago precisely because of a finding made by this Commission and the FCC that there were *no barriers to entry* in AT&T Ohio local exchanges. In adopting its recommendation to the FCC, this Commission observed that "local competition has continued to grow since the commencement of this proceeding."[14] In his letter to the FCC accompanying the Commission's report, Chairman Schriber stated as follows:

> " . . . the Ohio commission Report and Evaluation demonstrates that SBC Ohio has opened its local market to competitive local exchange companies who wish to compete in Ohio. SBC Ohio has done so by fully implementing the competitive checklist found in Sec. 271(c)(2)(B) with respect to its provision of access and interconnection pursuant to Sec. 271(c)(1)(A). Therefore, it is our belief, based on the proceeding we conducted, that

[14] *In the Matter of the Investigation Into SBC Ohio's Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, Case No. 00-942-TP-COI, Order, June 26, 2003, p. 6.

SBC Ohio's network for the purpose of satisfying the requirements of the 1996 Act, is open to competitors on a non-discriminatory basis.[15]

In its report to the FCC, the Commission concluded as follows:

> The PUCO believes that the operations of these companies via UNE loops and UNE-P signify the offering of telephone exchange service either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications service of another carrier.[16]
>
> * * *
>
> Based on our review of the record in this proceeding, the PUCO believes that SBC Ohio satisfies the requirements of Section 271 of the 1996 Act and has, for the purposes of Section 271 relief, opened its local market to CLECs that wish to compete within its incumbent local service territory.[17]

And in its order granting interLATA relief to AT&T Ohio, the FCC held as follows:

> We grant SBC's application in this Order based on our conclusion that SBC has taken the statutorily required steps to open its local exchange markets in these states to competition. (pp. 2-3)
>
> * * *
>
> On June 1, 2000, the Ohio Commission initiated a proceeding to review SBC's section 271 application for Ohio. The Ohio Commission held numerous and detailed collaborative workshops between SBC and the competitive LECs focused on OSS enhancements, development and supervision of OSS tests, performance measurements, and checklist items including UNE combinations. On June 26, 2003, the Ohio Commission issued an order concluding that SBC has opened the local markets in Ohio to competition and has satisfied all the requirements for section 271 approval. (p. 5)
>
> * * *
>
> We conclude that approval of this application is consistent with the public interest. After extensive review of the competitive checklist we find that barriers to competitive entry into the local exchange markets of the four applicant states have been removed, and that these local exchange markets are open to competition.[18] (p. 103)

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[15] Id., letter to FCC Commissioners from Chairman Alan R. Schriber, June 26, 2003.
[16] Id., Commission Report and Evaluation, June 26, 2003, p. 23.
[17] Id., p. 266.
[18] *In the Matter of Joint Application by SBC Communications Inc., Illinois Bell Telephone Company, Indiana Bell Telephone Company Incorporated, the Ohio Bell Telephone Company, Wisconsin Bell, Inc., and Southwestern Bell Communications Services, Inc. for Authorization To Provide In-Region, InterLATA Services in Illinois, Indiana, Ohio, and Wisconsin*, WC Docket No. 03-167, Memorandum Opinion and Order, FCC 03-243, adopted October 14, 2003, released October 15, 2003 (footnotes omitted). This Commission's order was adopted on June 26, 2003 in Case No. 00-942-TP-COI.

These findings conclusively establish that AT&T Ohio has removed barriers to entry in its local exchanges. In establishing the barriers to entry test, the General Assembly could not have intended anything more than that. Nor could the Commission have intended that a higher standard apply when it adopted its rules. Any barriers to entry in AT&T Ohio's exchanges have been gone for well over four years. Nothing OCC says can bring them back.

In addition to addressing local exchange service competition in the long distance entry case, the FCC more recently addressed it in the Triennial Review proceeding. It is instructive to review the findings related to competition (or, more precisely, the findings of the "lack of impairment") made by the FCC in that case. In analyzing the competitiveness of mass market local circuit switching, the FCC found as follows:

> C. Mass Market Unbundling Analysis
>
> Based on the evidence of deployment and use of circuit switches, packet switches, and softswitches, and changes in incumbent LEC hot cut processes, we determine not only that competitive LECs are not impaired in the deployment of switches, but that it is feasible for competitive LECs to use competitively deployed switches to serve mass market customers throughout the nation. Further, regardless of any potential impairment that may still exist, we exercise our "at a minimum" authority and conclude that the disincentives to investment posed by the availability of unbundled switching, in combination with unbundled loops and shared transport, justify a nationwide bar on such unbundling. Nor do we find that other factors, not relied upon in the *Triennial Review Order* impairment analysis, warrant unbundling of mass market local circuit switching.[19]

The language here is important because it represents a declaration by the FCC that there are no barriers to entry for competitors offering BLES and it shows that OCC's view of BLES is too narrow. The Commission recognized these FCC and Commission findings in its decisions concerning the Company's first application. 06-1013, Entry on Rehearing, February 14, 2007, p. 17.

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[19] *In the Matter of Unbundled Access to Network Elements, Order on Remand*, FCC 04-290, Released February 4, 2005, ¶ 204; See, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-290A1.doc.

AT&T Ohio's Application Satisfies The Requirements Of
Competitive Test 4, Where Applied

AT&T Ohio Has Lost At Least 15% Of Its Total
Residential Access Lines Since 2002

OCC argues that AT&T Ohio has not shown that the lines that were lost were lost to unaffiliated providers of BLES. OCC, p. 19. OCC suggests that the lines lost number could be comprised of customers who have switched their service to the Company's affiliated DSL service, an affiliate wireless carrier, and even those who "abandoned" lines. OCC, p. 19. The test, though, requires no such showing. Lines need not be lost for the reasons cited by OCC. The rule sets forth a "lines lost" test measured from a specified point in time to a point in time chosen by the Company. The ILECs do not necessarily know why lines were lost; they might not have that information and are under no obligation to gather it. The Commission acknowledged these facts and possible circumstances in adopting the metric of 15%. The "line loss" argument has been exhaustively reviewed in 05-1305 and 06-1013 and the Commission has reached conclusions that are not consistent with OCC's position. *See*, 06-1013, Entry on Rehearing, February 14, 2007, pp. 6-7, and 07-259, Opinion and Order, June 27, 2007, pp. 18-19.

Repeating the same argument, OCC asserts that "[l]ines that have simply migrated to another service offering by the applicant ILEC or an ILEC affiliate are not 'lost' to a competitor of any kind . . . as the customer remains under the umbrella of the parent company." OCC, p. 19, quoting Hardie ¶ 29. The Commission has repeatedly justified the line loss metric despite the OCC's criticism. *See*, 06-1013, Entry on Rehearing, February 14, 2007, pp. 6-7. There, the Commission stated:

> As we stated in our December 20, 2006 Opinion and Order, it is clear from the record that it would be impossible for AT&T Ohio, or any ILEC, to identify where the lost

residential lines have gone and, further, that the ILEC would not have access to other competitors' confidential market share information.

OCC also faults AT&T Ohio for its "failure to draw the nexus between the lost lines and competition." OCC, p. 20. But it is the Commission's rule that draws that nexus. The test established in the rule relies on the simple metric of lines lost without an inquiry into the reasons why the lines were lost or where the people who cancelled their service with the Company went. This reflects the Commission's desire to have measurements of competition that are attainable and verifiable. This approach has facilitated the application and review processes, but that goal would be placed in jeopardy if the subjective analysis proposed by OCC were to be adopted.

The subjective analysis that the OCC proposes could probably never be met by an applicant, a result the OCC desires. It wants proof that every customer in every exchange has a perfect substitute for stand-alone BLES at the same price. Moreover, it wants every line lost to be analyzed to determine why the line was lost by the applicant and to what entity it was lost. These approaches - - even assuming they could be implemented as a practical matter - - would frustrate the goals of the enabling legislation and the Commission's implementation of it. The Commission clearly understands this and has appropriately rejected the OCC's arguments previously.

Ms. Hardie criticizes the "lines lost" test and its application. Hardie, ¶¶ 29-37. AT&T Ohio complied with the line loss component of Test 4 by presenting its residential access line counts as of year-end 2002 and September 30, 2007. The test is very specific as to how AT&T Ohio was to show its line losses. It must start with the access line count "as reflected in

the applicant's annual report filed with the commission in 2003, reflecting data for 2002" and demonstrate a decline of at least 15% from those year-end 2002 figures. It should be obvious that the subsequent data would have to be stated on the same terms, *i.e.*, a count of residential lines on the same basis as such lines were counted in the annual report. AT&T Ohio did exactly that - - it relied upon line counts compiled from the same data sources as the data in its annual reports.

There is no dispute that AT&T Ohio's residential access line counts declined by more than 15% for each of the Test 4 exchanges. There is no need for any further inquiry on this prong of competitive Test 4. OCC has pointed out no flaw in AT&T Ohio's data or its math. Everything OCC says is an inappropriate challenge to the rule, not to AT&T Ohio's application.

The Commission devised a very simple, objective, and non-manipulable test that only requires an ILEC to present two numbers: first, the number of residential lines reported for that exchange on its 2002 annual report (a report that was filed with the Commission years before the establishment of the rule) and, second, the number of residential lines counted in the same manner, for a subsequent date. So long as the second number is less than 85% of the first number, the line loss test is satisfied. AT&T Ohio has satisfied the test in each exchange where it was applied.

At Least Five Unaffiliated Facilities-Based Alternative Providers Are Present And Serve The Residential Market

OCC argues that the Company "has not demonstrated that it meets the statute with the information it provides." OCC, p. 20. Expanding on this claim, Ms. Hardie argues that "the applicant should have been required to offer sufficient evidence to demonstrate that any

candidate facilities-based alternative provider satisfies the statutory criteria referenced by the Commission." Hardie, ¶ 18. Thus begins OCC's broad attack on the Company's use of wireless alternative providers. Hardie, ¶¶ 20-28, 51-91, 110-111. OCC even criticizes the lack of "dial tone" with wireless service (OCC, p. 26) and questions the efficacy of wireless access to 9-1-1 service (OCC, p. 27, citing Hardie ¶¶ 57-58). Suffice it to say that the Commission has already rejected the arguments against the use of wireless carriers to demonstrate competition for BLES.[20] It should reject those arguments again here. As to dial tone, customers do not expect to hear a dial tone on a wireless telephone; the concept of "dial tone" simply means a connection to a switch and the ability to place calls on the public switched network. Instead, wireless handsets display signal strength. As to 9-1-1, OCC is simply wrong. Wireless telephones can access 9-1-1 service anywhere it is available. The deployment of location-specific E9-1-1 service continues apace and will add to the substitutability of wireless services. Ms. Hardie even criticizes the lack of wireless access to the internet (OCC, p. 27, citing Hardie ¶63), ignoring the fact that internet access is not a component of BLES.

For her part, Ms. Tanner also embellishes the "alternative provider" prong of Test 4 with additional requirements that are neither logical nor called for by the statute. OCC, pp. 22-24. The Commission has addressed and rejected these arguments before:

> The Commission fully considered the Consumer Groups' arguments concerning the alternative providers prongs in 05-1305 and also raised here in opposition to AT&T Ohio's application for BLES alternative regulation. We find that the Consumer Groups have raised no new arguments for the Commission's consideration. Therefore, the Consumer Groups' application for rehearing on the Commission's use of the alternative providers prongs of Competitive Tests 3 and 4 is denied.

[20] Case No. 00-1532-TP-COI, Opinion and Order, December 6, 2001, pp. 17-18 (" . . . it is also clear that Ohio consumers have access to an ever increasing array of wireless providers that operate as an alternative to wireline providers."); 05-1305, Opinion and Order, March 7, 2006, pp. 6, 25.

06-1013, Entry on Rehearing, p. 9. OCC has offered no argument in this case that would justify changing the Commission's sound conclusions here.

OCC's arguments about the reliance on wireless and wireline alternative providers in meeting competitive Test 4 are simply a rehash of the time-worn and discredited "perfect substitutes" argument made by the Consumer Groups in the rules docket. The Commission has properly recognized that the law does not restrict the analysis of competition and reasonably available alternatives to competitive products that are perfect substitutes for BLES.[21] The Commission therefore concluded that alternative providers such as wireline CLECs, wireless, VoIP, and cable telephony providers are relevant to its consideration in determining whether an ILEC is subject to competition or whether customers have reasonably available alternatives to the ILECs' BLES offering at competitive rates, terms and conditions.[22] The Commission also properly noted that just because there is a customer segment that wants nothing other than the most basic of services, this does not alter the competitive analysis or conclusions.[23]

On the issue of the use of wireline and wireless alternatives, it should also be noted that in assessing competition, it is not necessary for all customers to view the services as reasonably interchangeable. What is critical in determining whether services are competitive substitutes is whether they "have the ability—actual or potential—to take significant amounts of business away from each other."[24] When a significant number of consumers actively choose among reasonable alternatives, firms must compete with each other for these customers. This is true today of mobile wireless and wireline services.

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[21] 05-1305, Opinion and Order, March 7, 2006, p. 25.
[22] Id.
[23] Id.
[24] *SmithKline Corp. v. Eli Lilly & Co.*, 575 F.2d 1056, 1063 (3d Cir.), cert. denied, 439 U.S. 838 (1978).

OCC's Criticisms Of The Data Supporting The Test 4 Exchanges Is Unfounded

OCC discusses the ten CLECs cited on the Test 4 Exchange Summary sheets by AT&T Ohio and finds fault with each and every carrier. OCC, p. 24. OCC raised the same issues for seven of those same carriers in 06-1013 and for eight of those carriers in 07-259, and in both cases the Commission determined that each met the requirements of the Commission's rules. 06-1013, Opinion and Order, December 20, 2006, p. 21, and 07-259, Opinion and Order, June 27, 2007, pp. 23-24. OCC has not provided any evidence which should cause the Commission to reach a different conclusion in this case.

AT&T Ohio's Application Satisfies The Requirements Of Competitive Test 3, Where Applied

At Least 15% Of Total Residential Lines Are Provided By Unaffiliated CLECs

OCC argues that the first prong of Test 3 does not satisfy the statute (OCC, p. 47) and goes on to criticize the data the Company supplied to meet that test. It posits that the Company has included four CLECs that do not provide residential service. OCC, p. 50. This argument is based on the faulty assumptions made and interpretations applied by OCC. The calculation of CLEC market share and the other proof supplied by the Company demonstrate otherwise.

OCC does not agree that the Commission should include the offering of wholesale services to VoIP providers for Test 3 purposes. OCC, pp. 50-51. As AT&T Ohio stated in its memorandum in support of it application:

> The Commission should count VoIP providers and the lines they serve for purposes of Test 3. This approach would be consistent with the Commission's rules, including the definition of "competitive local exchange carrier" in Ohio Admin. Code § 4901:1-4-01(E). As the Commission has recognized, a number of carriers provide wholesale

> services to others. In the recent Embarq case, the Commission adopted what it described as a "conservative approach" and said it would "consider only one facilities-based alternative service provider who is in partnership with Level 3 to be providing residential services in all of the four exchanges for the purpose of satisfying the Test 4 requirements." United Telephone Company d/b/a Embarq, Case No. 07-760-TP-BLS, Opinion and Order, December 19, 2007, pp. 26-27. AT&T Ohio submits that this approach should be extended to Test 3 as well in order to conservatively but more accurately depict the competitive landscape. Thus, the Commission should count the lines identified by AT&T Ohio that are facilitated by Global Crossing, Level 3, and Sprint. The offering of wholesale services to VoIP and other providers by these carriers is widespread. For example, on January 8, 2004 Global Crossing and XO Communications, Inc. announced a five-year network and access services agreement. See Attachment 1. In its 2006 10-K report to the United States Securities and Exchange Commission, Sprint Nextel Corporation stated, in its business overview, that it provides "switching and back office services to cable companies, which enable them to provide local and long distance service over cable facilities." See Attachment 2. All providers and lines should be counted where there is evidence of their presence in an exchange.

Memorandum in Support, December 28, 2007, pp. 4-5 (attachments omitted here).

As the Commission recognized in its recent *Embarq* order, CLECs and VoIP providers often partner in providing service to end users. *United Telephone Company d/b/a Embarq*, Case No. 07-760-TP-BLS, Opinion and Order, December 19, 2007, p. 26. For example, Level 3 and Global Crossing partner with Vonage and Packet8 while Sprint partners with Time Warner Cable. See Attachment. While the VoIP providers are not certificated by the Commission, for this purpose they should be treated like local exchange providers that are not ILECs. Pertinent to this point is that the Commission's definition of CLEC is "any facilities-based and non-facilities based local exchange carrier" that is not an ILEC. Ohio Admin. Code § 4901:1-4-01(E). The VoIP providers partner with traditional CLECs to obtain telephone numbers, establish 9-1-1 records, and obtain white page listings for the end users. In *Embarq*, the Commission agreed to count the traditional CLECs as providers. The Commission confirmed that approach on rehearing. *United Telephone Company d/b/a Embarq*, Case No. 07-760-TP-BLS, Entry on Rehearing, February 13, 2008, pp. 20-23. Similarly, the Commission

should count the lines that are provided by all of these partnering carriers for purposes of the Test 3 market share calculation.

At Least Two Unaffiliated Facilities-Based CLECs
Are Present And Provide Service To Residential Customers

OCC argues that MCI and Sage cannot be used to qualify under this prong because they do not provide stand-alone BLES to residential customers. OCC, p. 50; Tanner, ¶¶ 36-43. Here, OCC interweaves its faulty argument about stand-alone BLES into its attack on Test 3 and the Test 3 data supplied by the Company. The Commission rejected OCC's arguments - - and accepted MCI and Sage as viable competitors - - in both of AT&T Ohio's previous cases. 06-1013, Opinion and Order, December 20, 2006, p. 30, and 07-259, Opinion and Order, June 27, 2007, pp. 29-30. OCC's argument fails.

At Least Five Alternative Providers Are Present And
Serve The Residential Market

OCC criticizes the wireline and wireless provider candidates offered as proof of compliance with this prong of Test 3. OCC, pp. 53-56. In assessing competition, it is not necessary for all customers to view the services as reasonably interchangeable. What is critical in determining whether services are competitive substitutes is whether they "have the ability - - actual or potential - - to take significant amounts of business away from each other."[25] When a significant number of consumers actively choose among reasonable alternatives, firms must compete with each other for these customers. This is true today of mobile wireless and wireline services. The Commission rejected the Consumer Groups' arguments concerning the alternative provider test prongs in 05-1305, 06-1013, and 07-259 and it should do so again here.

[25] *SmithKline Corp. v. Eli Lilly & Co.*, 575 F.2d 1056, 1063 (3d Cir.), cert. denied, 439 U.S. 838 (1978).

OCC's Criticisms Of The Data Supporting The Test 3 Exchanges Is Unfounded

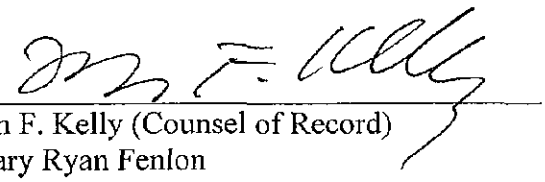
OCC's criticisms of the Company's Test 3 data is unfounded. As it did with Test 4 carriers, OCC examined and discussed the carriers listed on the Test 3 Exchange Summary sheets. OCC raised similar arguments in 06-1013, where the Commission disagreed and concluded that MCI and Sage met the test as unaffiliated facilities-based CLECs, and that ACN, First Communications, New Access, PNG, Revolution, Talk America, Trinsic, Alltel Wireless, Sprint-Nextel and Verizon Wireless met the requirements as alternative providers. 06-1013, Opinion and Order, December 20, 2006, pp. 30-32. Similarly in 07-259, the Commission affirmed MCI and Sage as unaffiliated facilities-based CLECs and found that, among others, ACN, Insight, First Communications, Revolution, Trinsic, Talk America/Cavalier, PNG, Global Connection, Alltel Wireless, Sprint/Nextel and Verizon Wireless each met the requirements as alternative providers under Test 3. 07-259, Opinion and Order, June 27, 2007, pp. 30-31. OCC raises nothing new that should cause the Commission to reach a different conclusion in this case.

Conclusion

For all of the foregoing reasons, OCC has presented no valid basis for the Commission to deny the Company's application or to set this matter for hearing. The Commission's rules comply with the statute and the Company's application complies with - - and meets the tests required by - - the rules in all respects. The Commission should either permit the application to be approved automatically, as provided for in Ohio Admin. Code § 4901:1-4-09(G), or issue an appropriate order approving the application in its entirety.

Respectfully submitted,

AT&T Ohio

By: 

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Its Attorneys

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ATTACHMENT

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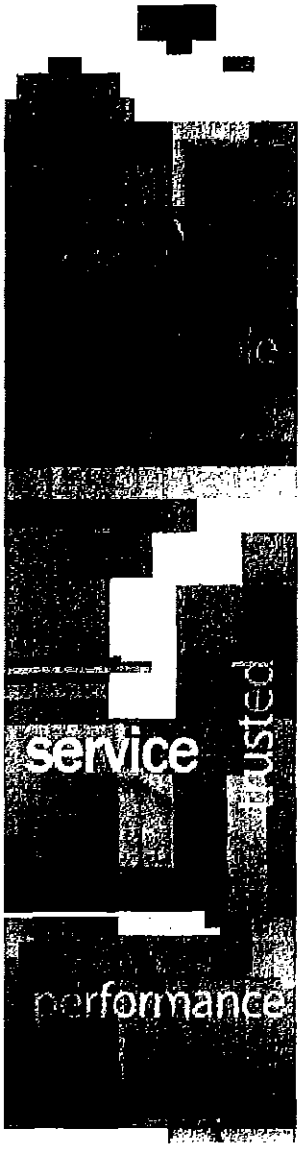

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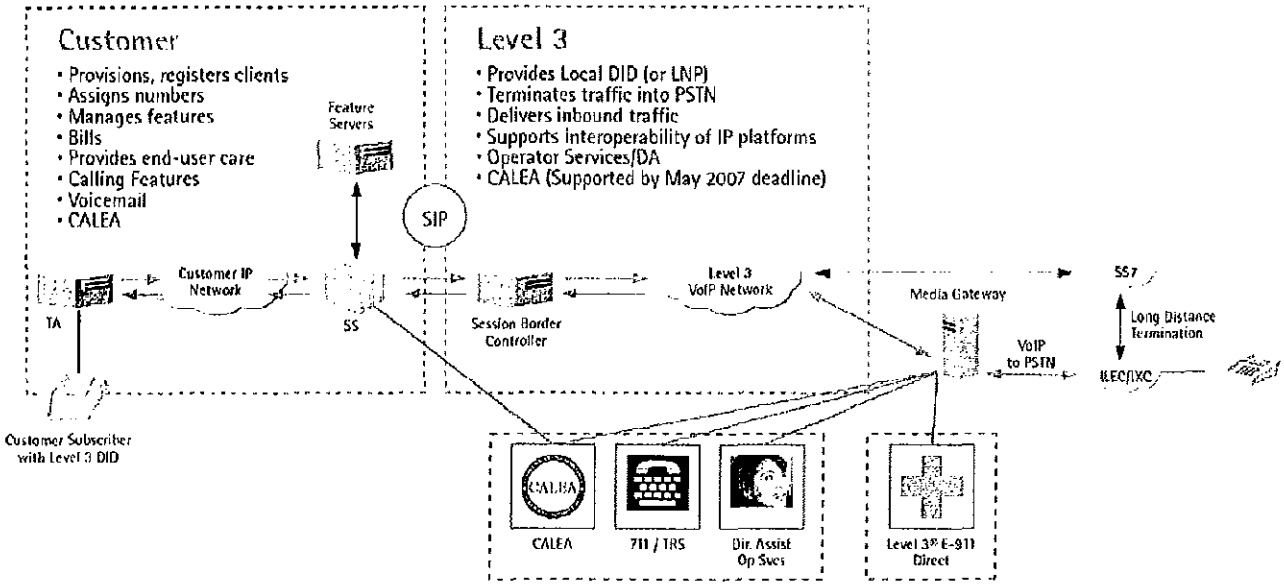

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Level 3 Signs Deals With Vonage

midnight trader

September 19, 2005

By Staff

Vonage Network, a subsidiary of Vonage Holdings, today said it has selected Level 3 Communications (LVLT) to enable critical components of Vonage's nomadic E-911 service. Terms were not disclosed.

Separately, TeleCommunication Systems (TSYS) and Level 3 today said they have signed a deal for TCS to deliverEnhanced 911 emergency service components to the customers of Level(3) E-911 Direct service.

cnet NEWS

VoIP provider Vonage suffers outage

By Ben Charny
http://www.news.com/VoIP-provider-Vonage-suffers-outage/2100-7352_3-5293439.html

Story last modified Mon Aug 02 15:32:57 PDT 2004

Net phone service provider Vonage confirmed that it suffered its first outage in 18 months on Monday, blaming problems at partner Global Crossing.

But a Global Crossing representative said the company had investigated but found no problems involving "outages or routing issues on the Global Crossing network."

Customers could still receive calls, but a small percentage of Vonage's 200,000 total subscribers couldn't make outbound calls from around 7:45 a.m. to 9:15 a.m. PDT, at which time the problem was fixed, according to a Vonage representative.

The outage didn't sit well with at least one Vonage customer. Jay Ackerman was thinking about doing exactly what the company wants: dropping his traditional landline for Vonage's voice over Internet Protocol (VoIP)-based service. Now, he said in an e-mail to CNET News.com, he's not so sure.

"We discussed getting rid of our landline this weekend," he wrote after his phone service was restored. "We'll be holding off on that idea for now."

Vonage's Web site was knocked off the Internet during that time as well, because Global Crossing also hosts the site, according to a Vonage representative. Global Crossing had no immediate comment.

VoIP calls use the Internet rather than the heavily taxed traditional phone network. As a result, unlimited dialing plans are sometimes 80 percent cheaper than traditionally placed calls.

Although minor, the outage is a black

CNET NEWS

VoIP provider Vonage suffers outage

eye for an industry that has worked hard to show that it's equal in reliability to the regular phone network. The incident underscores the risks of switching from the landline phone network, which, after a century of tinkering, claims 99.9 percent reliability.

VoIP requires a broadband connection; calls don't dial directly to 911; and if power to a home or office is lost, so is phone service.

Yet industry watcher Gartner believes that there will be a growing appetite for such services. The researcher predicts that VoIP will replace about 17 percent of North American phone lines by 2008.

TMCnet NEWS

[October 17, 2003]

Global Crossing Becomes Carrier of Choice for Vonage

- Global Crossing provides IP Transit service, co-location service and carrier voice services.

- Vonage end-users reap benefits of high-quality domestic and international long-distance.

FLORHAM PARK, N.J., Oct. 13 /PRNewswire/ -- Global Crossing announced today that it has signed a multi-year contract with Vonage to provide the broadband telephony provider IP Transit, co-location service, and domestic and international voice termination services. The partnership will make Global Crossing Vonage's preferred provider of long distance voice termination.

We're excited to be partnering with Global Crossing, a leading telecommunications player, said Michael Tribolet, executive vice president of operations at Vonage. Global Crossing's ability to provide us with highly reliable connectivity and outstanding reach was a perfect fit for us. Combine network quality with dedicated account support, and an outstanding online tool uCommand, and we're looking at a winning partnership.

Vonage provides small businesses and consumers the ability to make domestic and international long distance telephone calls over their existing high-speed Internet connections. The broadband telephony provider recently topped the 55,000-subscriber mark as it continues to expand its service coverage to new areas of the United States.

We're proud to partner with Vonage by supplying a highly reliable high performance network for their broadband telephony offering, said Ted Higase, Global Crossing's executive vice-president of carrier sales and marketing. The partnership recognizes our commitment to delivering innovative network services that support a truly unique customer experience.

Global Crossing services are delivered through premier dedicated customer support, 24 hours a day, seven days a week, from state-of-the-art network operations centers (NOCs) and call centers worldwide. Additionally, uCommand, Global Crossing's secure, private Web-based network management support tool allows customers to monitor their voice services, create utilization reports, reroute traffic, order new services, and create and track trouble tickets.

All of Global Crossing's voice and data services are delivered via a fiber-optic network that provides connectivity to 200 cities in more than

27 countries.

Global Crossing IP Transit service offers carriers and ISPs Internet connectivity to all worldwide domains connected in Europe, U.S. and Latin America using a meshed network that incorporates Multiprotocol Label Switching
(MPLS) technology. Global Crossing's Tier 1 IP backbone leverages a single autonomous system (AS) number with MPLS traffic engineering to deliver the
minimum number of hops, for the fastest transmission speeds worldwide.

Global Crossing co-location service allows for the housing of customer equipment within a Global Crossing Point of Presence (PoP) or Repeater Site in
order to interconnect with our fiber-optic backbone. Co-location delivers improved speed, stability and security for critical network requirements.

Global Crossing's carrier and commercial voice products include switched and dedicated outbound and inbound voice services for domestic and international long-distance traffic, including toll-free enhanced routing services, calling cards, and commercial managed voice services.

ABOUT VONAGE

Vonage is redefining communications by offering consumers and small businesses an affordable alternative to traditional telephone service. The fastest growing telephony company in the US, Vonage's service area encompasses
more than 1,800 active rate centers in 100 US markets. Sold directly through http://www.vonage.com , retail partners such as Amazon.com. Wholesale partners such as EarthLink, ARMSTRONG, Advanced Cable Communications and the Coldwater Board of Public Utilities resell the Vonage broadband phone service under their own unique brands. Vonage currently has more than 50,000 lines in service. Over 2.5 million calls per week are made using, the easy-to-use, feature-rich, flat rate voice communications service. Vonage is headquartered in Edison, New Jersey. For more information about Vonage's products and services, please visit http://www.vonage.com or call 1-VONAGE-HELP. Vonage(R), Vonage Digital Voice(SM), Toll Free Plus(SM) and Virtual Phone Number(SM) are trademarks or service marks of Vonage Holdings Corp.

ABOUT GLOBAL CROSSING

Global Crossing provides telecommunications solutions over the world's first integrated global IP-based network, which reaches 27 countries and more
than 200 major cities around the globe. Global Crossing serves many of the world's largest corporations, providing a full range of managed data and voice
products and services.

On January 28, 2002, Global Crossing Ltd. and certain of its subsidiaries (excluding Asia Global Crossing and its subsidiaries) commenced Chapter 11 cases in the United States Bankruptcy Court for the Southern District of New

York (Bankruptcy Court) and coordinated proceedings in the Supreme Court of
Bermuda (Bermuda Court). On the same date, the Bermuda Court granted an order appointing joint provisional liquidators with the power to oversee the continuation and reorganization of the Bermuda-incorporated companies' businesses under the control of their boards of directors and under the supervision of the Bankruptcy Court and the Bermuda Court. Additional Global
Crossing subsidiaries commenced Chapter 11 cases on April 23, August 4 and
August 30, 2002, with the Bermuda incorporated subsidiaries filing coordinated
insolvency proceedings in the Bermuda Court. The administration of all the cases filed subsequent to Global Crossing's initial filing on January 28, 2002 has been consolidated with that of the cases commenced on January 28, 2002. Global Crossing's Plan of Reorganization, which was confirmed by the Bankruptcy Court on December 26, 2002, does not include a capital structure in
which existing common or preferred equity will retain any value.

On November 18, 2002, Asia Global Crossing Ltd., a majority-owned subsidiary of Global Crossing, and its subsidiary, Asia Global Crossing Development Co., commenced Chapter 11 cases in the United States Bankruptcy
Court for the Southern District of New York and coordinated proceedings in the
Supreme Court of Bermuda, both of which are separate from the cases of Global
Crossing. Asia Global Crossing has announced that no recovery is expected for
Asia Global Crossing's shareholders. Asia Netcom, a company organized by China Netcom Corporation (Hong Kong) on behalf of a consortium of investors,
has acquired substantially all of Asia Global Crossing's operating subsidiaries except Pacific Crossing Ltd., a majority-owned subsidiary of Asia
Global Crossing that filed separate bankruptcy proceedings on July 19, 2002. Global Crossing no longer has control of or effective ownership in any of the assets formerly operated by Asia Global Crossing.

Please visit http://www.globalcrossing.com for more information about Global
Crossing.

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VoIP Blog - Tehrani.cc

VoIP Blog with the latest news in the VoIP, call center and CRM space, with plenty of opinion & analysis...

SunRocket Switch to Packet8

July 18, 2007

Yesterday I blogged about the SunRocket bankruptcy and I mentioned how although pure-play VoIP is not easy, a company like 8x8/Packet8 is doing a good job. Today I came across an article on TMCnet discussing how Packet8 is the preferred replacement service for SunRocket customers.

I queried the company's VP of Marketing, Huw Rees about what this means and why customers should switch. Most importantly I asked whether a pure play VoIP provider can be successful. Huw has some good points which follow below.

Packet8 is the preferred replacement service by SunRocket... How did this come about?

We made contact with the company that is doing the wind down, Sherwood Partners. They had made contact (or been contacted) by several other potential providers and they seemed concerned that the preferred partner(s) needed to have sufficiently scalable processes and infrastructure to cope with the expected large number of additional customers (which we have). They also liked the fact we were public and financially sound.

How long does a port take from SunRocket to Packet8?

We share common carriers with SunRocket (at least for the most part, maybe not entirely), so many ports will not really be ports at all, in that the number will remain with the same CLEC (e.g. Level3 or Global Crossing). In this case it should take 4-5 business days. The carriers are well aware of the situation and we are trying to improve this. I'm sure there will also be some cases where it will take longer, but we expect the vast majority will be quite quick to port.

What are some of the benefits of Packet8 service as opposed to other VoIP providers?

We own all the core technology, which, we believe allows us to provide better overall quality and reliability. In addition, we offer a complete range of services from residential to the Virtual Office small business solution to our virtually unique Packet8 Tango video service.

Does being a publicly traded company a benefit to consumers?

Yes, because the consumer can evaluate the financial condition of the company they are dealing with. In addition, public companies must disclose material issues and events such as lawsuits and perhaps letters of going concern and such which they can use to determine whether to stay with a particular company. With a private company they have no visibility as to the viability of the company and events like SunRocket's demise can literally happen overnight.

Some say the pure play VoIP market is impossible because SunRocket is bankrupt and Vonage is having tremendous financial problems. What is your take?

About Me (Full

President, Publis
Blogger.

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We completely disagree (as you might expect). March 31 2007 we reported our 2007 fiscal year results and we grew revenues by 67% to over $53M and finished the year with $12M in the bank. Most importantly, we were darn close to cash flow break even in the fourth quarter, with just $492,000 reduction in cash. We have not yet released our numbers for the June quarter, but if you look at our financial trends you will see great progress towards cash flow positive and following that, profitability. The real key is a) don't make nonsensical offers just to get subscribers (i.e.SunRocket's 2 years for $199) and b) don't let your customer acquisition cost get to a point where it takes you a ridiculously long time to recoup, if you ever recoup it. Other reasons we are confident we will survive and thrive are: as mentioned above we own the core technology, this means we don't have to pay any significant license fees or royalties, so we have a low cost structure and by providing business as well as residential services, we leverage the residential volume to drive down our carrier and infrastructure costs and drive up our gross margins with sales of the business services. It is not impossible and we are proving it.

Why should SunRocket customers switch to Packet8?

Our service is very similar to SunRocket's so users will be familiar with the features etc. We believe our quality and reliability is at least as good as SunRocket's and we are making a special offer for them to come over to Packet8; free activation, free equipment, free shipping and first month free. In addition, SunRocket subscribers can be assured that we are charging a fair price that enables us to cover our costs and potentially make a small profit, which is a good thing, not a bad thing as this means we will be around for the long term!

If you want to hear more about 8x8/Packet8 be sure to come to Internet Telephony Conference & Expo in two months and hear the company's chairman Bryan Martin give a keynote address.

Tags: 8x8, bankruptcy, bryan martin, huw rees, packet8, sunrocket, voip, vonage
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Comments to SunRocket Switch to Packet8

RE: SunRocket Switch to Packet8

MPINGI too is there,its a sunrocket rival is offering special offers for exisiting sun rocket customers

who can no longer access the sunrocket service because of the company failure.
if you are a sunrocket customer, i suggest you check out their offers...
check out http://www.1800-info.com/sunrocket2/index2.php

i have filled the form, waiting for them to get in touch with me...offers seem rather interesting!

By *Rohit*
July 24, 2007 6:59 AM

RE: SunRocket Switch to Packet8

I recommend using www.telifu.com for India. I have used SunRocket before and lost 9 months worth of service. By using Telifu, I am paying only 17$ a month for unlimited service and month to month. They shipped the adapter straight to India where I wanted them to and they helped doing the setup also. I recommend that you use them, http://www.telifu.com

By *Anjali Deb*
January 12, 2008 10:01 PM

RE: SunRocket Switch to Packet8

I recommend using Telifu VOIP service. I have been using them for a while and pay about 17$ per month for unlimited calling from India to USA and vice versa. The call quality is excellent and they provide really good support in India. They even shipped the adapter to the address in India. I lost about 9 months worth of service with SunRocket. I recommend checking them out, http://www.telifu.com

By *Anjali Deb*
January 12, 2008 10:17 PM

Re: SunRocket Switch to Packet

If you have a TypeKey identity, you can sign in to use it here.

(If you haven't left a comment here before, you may need to be approved by the site owner before your comment will appear. Until then, it won't appear on the entry. Thanks for waiting.)

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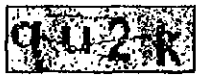
CAPTCHA™ Code: 

Post

Sprint, Time Warner Cable Sign Agreement that Helps Enable Time Warner Cable to Offer Telecom Services

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OVERLAND PARK, Kan. – 12/08/2003

Sprint (NYSE: FON, PCS) today announced a significant, new relationship with Time Warner Cable, the second-largest cable operator in the United States, that helps enable Time Warner to offer voice phone service as part of its growing bundle of services offered to subscribers.

Sprint will help enable Time Warner Cable to offer voice-over-IP-based telephone service to Time Warner Cable subscribers in 17 markets. Additionally, Sprint will carry long-distance traffic for Time Warner residential customers and provide turnkey telephone services such as 911 service, relay systems and operator services.

The agreement helps enable Time Warner Cable to add voice telephone service to its existing portfolio of product offerings - such as digital cable service, high-speed data, video on demand, and digital video recorders, providing a competitive advantage that repositions the cable operator as a full service video, voice and data provider. The addition of telecom services represents a highly attractive opportunity to address competition, retain customers and capture new revenues with bundled services.

The agreement also marks commencement of a major expansion for Sprint into the cable wholesale market resulting in a prospective revenue stream with strong growth potential. Sprint plans to leverage its telecom assets and communications expertise in order to help drive this expansion and deliver telephony solutions to the cable industry.

"Partnering up with Sprint eliminates the need for Time Warner to invest in a costly build out of new network infrastructure to offer voice services," said Glenn Britt, chairman and chief executive officer, Time Warner Cable. "Capitalizing on their local points of interconnection, our broadband cable system and the efficiencies and flexibility of IP technology, Time Warner Cable is now poised to deliver to consumers local and long-distance telephony services more efficiently, at a lower cost, and with the reliability and quality of service that customers require."

Specific to the agreement with Time Warner, Sprint will provide:

- Interconnection facilities between Time Warner's switch and the public telephone network for local and long-distance calling.
- Support for the cable voice telephony through E911 management, directory assistance, operator services voicemail and other local exchange carrier services.

Sprint intends to expand the marketing of its telephony services to the cable market as an alternative to cable operators' building their own voice infrastructure. "Sprint's value proposition to the cable industry makes sense to the operators we've spoken to," said Paget Alves, president of strategic markets, Sprint. "Conversely, it doesn't make sense to them to expend valuable capital to build a voice network when they can leverage Sprint's existing networks, management experience and technical knowledge. Our intent is to fulfill as many of their telecommunications needs as they want—from basic transport to a fully outsourced solution that includes network design, implementation and management, all backed by aggressive service level agreements and comprehensive support."

About Time Warner Cable
Time Warner Cable owns and manages cable systems serving 10.9 million subscribers in 27 states, which include some of the most technologically advanced, best-clustered cable systems in the country with more than 75% of the Company's customers in systems of 300,000 subscribers or more. Utilizing a fully upgraded advanced cable network and a steadfast commitment to providing consumers with choice, value, and world-class customer service, Time Warner Cable is an industry leader in delivering advanced products and services such as video on demand, high definition television, high-speed data, wireless home networking, and digital video recorders. Time Warner Cable is a subsidiary of Time Warner Inc.

Certificate of Service

I hereby certify that a copy of the foregoing has been served by first class mail, postage prepaid, and by e-mail this 21st day of February, 2008 on the following parties:

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