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.)	Case No. 96-1310-TP-COI

ENTRY

The Commission finds:

(1) On July 18, 2007, the Payphone Association of Ohio (PAO) filed a motion to request that the Commission apply the New Services Test (NST) pricing methodology to certain non-RBOC (Regional Bell Operating Companies) in the State of Ohio. The PAO contends that the pricing policies of the following incumbent local exchange carriers (ILECs) are contributing to the elimination of public telephones: Windstream Ohio, Inc.; Windstream Western Reserve, Inc.; United Telephone Company of Ohio dba Embarq aka Embarq Communications, Inc. (Embarq); CenturyTel of Ohio, Inc.; Cincinnati Bell Telephone Company, LLC (CBT); and Verizon North Inc. (Verizon).[1] As a matter of public policy, the PAO urged the Commission to take steps to preserve the availability of public telephones.

(2) For immediate relief, the PAO proposes that the Commission set an interim rate equal to AT&T Ohio's (AT&T) most rural Rate Band D until each company supports its cost and reasonable overhead through an NST cost study. Alternatively, the PAO would support an ILEC's permanent adoption of AT&T's Rate Band D without review or investigation.

On an interim basis, the PAO requests that the Commission issue an order directing the ILECs to file payphone tariffs based upon the Federal Communications Commission's (FCC's) NST using existing and Commission-approved cost studies for unbundled elements. In the alternative, the PAO requests that the ILECs be ordered to mirror AT&T's Rate Band D rates for pay telephone service. For permanent application, the PAO

1 These ILECs, sometimes with the exclusion of Verizon, shall be referred to collectively as the ILECs.

requests that the Commission issue an order directing the ILECs to prepare forward-looking cost studies/benchmark rates that comport with the NST. Finally, the PAO requests that the Commission's staff investigate the payphone services provided by the ILECs to ensure compliance with the NST.

(3) Verizon filed a memorandum contra on August 2, 2007. The ILECs filed a memorandum contra on August 6, 2007. Verizon and the ILECs urged the Commission to deny the PAO's motion. Among other reasons for dismissal, the ILECs argued that the PAO's motion is barred by collateral estoppel and res judicata.

(4) On August 10, 2007, and August 16, 2007, the PAO filed a reply memorandum. The Office the the Ohio Consumers' Counsel (OCC) filed a reply memorandum in support of the PAO on August 16, 2007.

(5) On October 3, 2007, the Commission issued an entry providing the parties with an opportunity to file comments. To determine whether to consider the merits of the PAO's proposals, the Commission invited comments from the ILECs and others who may have an interest in this matter. The Commission emphasized that comments should address substantive matters, not procedural impediments. Among other relevant topics, the Commission suggested that comments should address the appropriateness of current wholesale pricing levels, public interest issues, and the increasing or decreasing availability of ILEC pay telephones. The Commission directed that comments be filed on or before November 14, 2007, and that reply comments be filed on or before December 5, 2007.

(6) On November 14, 2007, the PAO filed individual comments from six of its members: American Communications of Ohio, Inc.; EZ Net Communications, Inc. (EZ Net); One Touch Payphones, Ltd. (One Touch); Pinnacle Products, Inc. (Pinnacle); Tower One Telecom (Tower One); and North Coast Payphones, Inc. (North Coast).

The PAO emphasizes that rates charged by non-RBOC ILECs combined with ever decreasing payphone use has reduced payphone revenue to the point where the independent payphone providers (IPPs) must remove their payphones. For example, EZ Net estimates that it will remove approximately 50 percent of its phones within the next 12 months. One Touch states that it has pulled 70 percent of its phones from Embarq territory, 40 percent from Verizon territory, and 50 percent from ALLTEL territory. Pinnacle reports that it has removed 23 percent of its payphones. Tower One reports that in the past three years it has removed 55 of 100 payphones. As a percentage, North Coast states that 30 percent of its telephones were in non-RBOC territory. Today, that percentage is 11 percent.

The PAO contends that it is compelled to remove payphones in non-RBOC territories because of decreasing demand and profitability. Pinnacle, for example, reveals that its average line charge in non-RBOC areas is $50 a month. A reduction in use or demand can result in monthly service rates exceeding revenue. In such a situation, the payphone provider must remove payphones to sustain profitability. The PAO believes that NST rates would be lower and would prolong the viability of public payphones. Referring to phone bills from the named ILECs in other states, the PAO finds that the ILECs can provide service at significantly lower rates than those charged by non-RBOCs in Ohio. From this evidence, the PAO concludes that non-RBOC rates in Ohio are inflated and unreasonable.

The PAO requests urgent relief to avoid immediate removal of public telephones. For example, in its November 2007 comments, Tower One stated that it has scheduled the removal of 15 telephones. An additional 24 payphones are at risk of removal because of insufficient revenue.

(7) The OCC filed comments in support of the PAO on November 14, 2007. The OCC responded to the Commission's issue of whether non-RBOC ILEC phone rates are appropriate. After comparing the rates of the ILECs with AT&T's rates, the OCC submits that a reasonable inference from these differences is that the ILECs' payphone rates are subject to monopoly pricing markups. Confronting the argument that the ILECs' costs may be greater than AT&T's, the OCC considered the respective loop rates of CBT and AT&T. The OCC concluded that CBT's costs are not significantly higher to justify a payphone rate that is nearly 2.5 times greater than AT&T's. To alleviate what the OCC believes to be excessive rates, the OCC recommends that

non-RBOC ILEC rates be based upon a forward-looking methodology, such as TELRIC (total element long run incremental cost) or TSLRIC (total service long run incremental cost).

Next, the OCC addressed the availability of payphones. Obtaining information from the Commission's annual reports, the OCC examined ILEC reports of access lines and the number of ILEC paystations. The OCC noted declines in ILEC payphones.

Citing the FCC's *Wisconsin Order*,[2] the OCC finds support for asserting that payphones serve the public interest. The OCC points out the following language from the Wisconsin Order:

> Payphones are an important part of the nation's telecommunications system. They are critical not only for emergency communications, but also for those Americans who cannot afford their own telephone service. Thus, despite evidence that payphones are losing market share to wireless services, the basic pay telephone remains a vital telecommunications link for many Americans.

To further these ends, the OCC believes that it is in the public interest to require cost-based rates to preserve payphones.

The OCC acknowledges that Section 4927.02(A), Revised Code, recommends that the Commission rely on market forces where such forces can support a healthy, sustainable, and competitive telecommunications market to maintain just and reasonable rates. Nevertheless, the OCC urges the Commission to follow the FCC which, according to the OCC, did not rely on market forces to ensure that AT&T set rates that were just and reasonable. Instead, the OCC suggests that the Commission heed Section 4927.02(A)(4), Revised Code, which directs the Commission to promote diversity and options in public telecommunications. Moreover, Section 4927.02(A)(7), Revised Code, cautions the Commission not to favor unduly or unduly disadvantage competitors of functionally equivalent services. By allowing the ILECs to charge the current rates, the OCC

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2 *In the Matter of Wisconsin Public Service Commission Order Directing Filings*, Bureau/CPD No. 00-01 (Memorandum Opinion and Order, Released January 31, 2002).

contends that the Commission is effectively favoring the ILECs over IPPs.

(8) Verizon filed comments on November 14, 2007. On the same date, the ILECs filed comments. The ILECs argue that the NST has no material effect on the demand for payphone service. Moreover, the ILECs highlight that the PAO has failed to provide evidence that access line prices are related to decreasing payphone demand. The ILECs are certain that the NST will not reverse the decline in payphone demand. They are equally certain that the IPPs will not be able to maintain the current number of payphones. Relying on statistics, the ILECs assert that payphone use has declined and will continue to decline. The problem, contends the ILECs, is that technology and competition are eroding the payphone market, not payphone rates. Consumers have alternatives that are less expensive and more convenient. Wireless phones, voice mail, cable phone service, e-mail, instant messaging, broadband Internet access, and voice over internet protocal (VoIP) erode payphone demand. Some of these services are available free of charge at public libraries, schools, WiFi hot spots, and places of employment.

The ILECs reject the notion that the NST will stimulate an increase in payphone use. Instead, the ILECs predict that the IPPs will simply retain the extra revenue to enhance their profits temporarily. To support their supposition, the ILECs note that IPPs have not materially decreased their rates in AT&T's territory since the imposition of the NST. Nor have IPPs passed their cost savings on to consumers. Along the same lines, the PAO has produced no evidence that PAO members have increased the number of payphones in AT&T's region since obtaining more favorable rates in January 2003. To contest further the relationship between NST rates and demand, the ILECs report that FCC data regarding Michigan show that the greatest reduction in payphones has occurred in non-RBOC areas where the state commission applied the NST. To Verizon, the NST represents a governmentally imposed subsidy, a temporary increase in profits, and an artificial and temporary cost reduction windfall. Competition and technological change, not monopoly markups, is the cause of declining demand for payphones Verizon claims. The cure, according to Verizon, is for the Commission to encourage innovation and creativity on the part of the IPPs.

In its July 18, 2007, motion, the PAO alleged that five percent of American homes do not have telephone service and twenty-five percent do not have cellular telephones. Verizon responds that the PAO makes faulty assumptions concerning the percentage of homes without telephone service. Verizon challenges the assumptions that these customers need access to a telephone and that they rely on payphones. Instead, these customers may rely on other means of communication, such as a friend's or neighbor's phone.

Some ILECs dispute that payphones serve a universal service function. The ILECs criticize the PAO and the OCC for failing to identify who, among the five percent of persons without traditional or wireless service, relies on payphone service. Moreover, there is no evidence that the PAO locates payphones to serve that population. Typically, payphones are located in densely populated areas to achieve higher demand and profits. This fact, argues the ILECs, undermines the PAO's argument that payphones provide a universal service function. Lower access line rates will not ensure that IPPs locate payphones to serve the public interest. Nor will the preservation of payphones in a competitive marketplace serve a public interest.

The ILECs contend that the NST is not appropriate. They proclaim that the NST will not slow the loss of public communications. The ILECs fault the PAO for failing to support with evidence any causal link between access line rates and the decline in payphone use. To the contrary, the ILECs are unaware of any evidence showing that the number of payphones has increased in areas where rates have been reduced. The ILECs note that payphone rates have not changed for ten years and have been approved by the Commission. Taking into account that rates have stayed the same for ten years, the ILECs point out that the PAO has not presented evidence to show that non-RBOC rates are excessive or unreasonable.

Responding to the PAO's claim that non-RBOC ILEC payphone rates are 250-350 percent of the highest AT&T payphone rates, the ILECs dismiss this claim as irrelevant. Likewise, the ILECs place little significance in the PAO's claim that non-RBOC ILEC rates in neighboring states are significantly less. The ILECs counter that the cost to provide service varies by company, by state, and over time. The ILECs condemn as arbitrary, inappropriate, and likely unlawful a Commission order for non-RBOC ILECs to lower their rates based upon another carrier's rates. Conducting its own sampling, the ILECs find that ILEC rates in neighboring states are not significantly less expensive.

The ILECs suggest that they are not the exclusive means of interconnection for IPPs. Competitive local exchange carriers (CLECs), they claim, can offer service to payphone providers. Recognizing that not all CLECs choose to offer payphone services, the ILECs point out that IPPs can negotiate with CLECs to interconnect with the public switched network. However, the ILECs admit that few CLECs offer payphone service. From the fact that few CLECs offer payphone services, the ILECs take as evidence that the demand for such service is low.

Turning to legal authority, Verizon notes that Ohio law does not require the NST. Likewise, noting that many ILECs are under alternative regulation, Verizon points out that there is no provision for the NST under alternative regulation. In addition, argues Verizon, imposing the NST has no legal basis and would violate due process. For lack of legal authority, Verizon believes that the Commission must deny the PAO's request to apply the NST to non-RBOC ILECs.

(9) The ILECs urge the Commission to reject the PAO's proposal that ILECs either file NST-based tariffs or file tariffs that mirror AT&T's Band D rates. The ILECs also request that the Commission reject the PAO's request for NST cost studies. Aside from being costly and burdensome, the ILECs do not believe that these measures will lead to the preservation of payphones. Nevertheless, to any extent that the Commission directs the ILECs to reduce their rates, the ILECs suggest, as a means to promote the public interest, that the Commission order IPPs to pass their cost savings to consumers.

(10) The PAO filed reply comments on December 5, 2007. On December 6, 2007, the PAO moved for leave to file amended

reply comments. Noting minor errors in its reply comments, the PAO filed amended reply comments to correct the errors of its December 5, 2007, filing. No objections have been filed and there appears to be no prejudice to any participants in this proceeding. The motion for leave to file amended reply comments shall, therefore, be granted.

(11) Responding specifically to Verizon, the PAO contends that Verizon has missed the point and has mischaracterized the PAO's positions. The PAO emphasizes that it does not expect demand for payphones to rise with the implementation of the NST. In fact, the PAO acknowledges that the demand for payphones will likely continue to decrease over time. What the PAO is attempting to achieve is the availability of a sufficient number of payphones in non-RBOC areas in Ohio. In addition to preserving enough payphones to meet communication needs, the PAO seeks to preserve the universal service function of payphones. Responding to the ILECs, the PAO phrases the question in terms of whether payphones can be maintained in an environment of decreasing demand by limiting the charges to NST standards. Taking issue with Verizon's claim that the PAO's proposals are tantamount to a government subsidy, the PAO retorts that the NST is a proven method for the removal of subsidies.

The PAO rejects Verizon's suggestion that Ohioans do not rely on payphones. Responding with anecdotal accounts, the PAO provides instances where customers have expressed a need, desire, and appreciation for public telephones. The PAO acknowledges that it is in a competitive business, but the provision of dial tone is not competitive. In the PAO's opinion, the cost of dial tone is kept artificially high because there is only one provider.

Challenging the use of the term "wholesale" to describe rates paid by IPPs, the PAO points out that the rates are end user business line rates plus the extra cost of call screening and without multiple line discounts. According to the PAO, the phone line charge is the largest cost category for an IPP operating in a non-RBOC area.

Challenging the ILECs' interpretation of FCC data, the PAO provides tables and data concerning pay telephone declines in the U.S. The PAO, for example, points out that Ohio is losing payphones faster than the national average in non-RBOC areas. Comparing RBOC with non-RBOC areas in Ohio, the PAO finds, respectively, a 6.83 percent to a 33.77 percent decline in payphones for 2004-2006. The PAO points to ILEC payphone rates as the cause underlying this disparity. Highlighting a more dramatic difference, the PAO compared non-RBOC ILEC payphone declines of 28.58 percent with IPP declines of 63.79 percent in the same non-RBOC areas from 2003-2006. ILEC payphone losses for 2004-2006 in RBOC and non-RBOC areas were roughly the same, respectively 40.76 percent and 40.51 percent. From this information, the PAO concludes that costs for RBOC and non-RBOC ILECs are similar.

The PAO contends that the ILECs have misrepresented the data concerning Michigan's application of the NST to non-RBOCs. According to the PAO, Michigan did not apply the NST to all non-RBOCs. Instead, Michigan applied the NST to a single non-RBOC. Moreover, the PAO points out that the NST remains in dispute because the state, according to the PAO, has not applied the NST properly. A better comparison, the PAO believes, is Indiana. There, the PAO finds that the NST was applied properly to the RBOC and to two major non-RBOC ILECs. During the years 2004-2006, the RBOC losses were similar in Ohio and Indiana. However, the percentage of non-RBOC phones removed in Ohio is more than twice that of Indiana.

Although the ILECs deny that there is a causal link between cost and demand, the PAO declares otherwise. The PAO contends that demand is high enough to support a "reasonable phone bill." Conducting a profit and loss analysis, the PAO finds that for the 12 months ending October 2007, the average public pay telephone in the Embarq area is operating at a loss for PAO members. Moreover, the PAO states that revenues are declining at the rate of 12 percent each year. Looking forward from October 2007 to October 2008, the PAO projects that, with the exception of Verizon territory, the average public payphone will operate at a loss in all other non-RBOC areas. By the end of October 2009, the average payphone will operate at a loss in all non-RBOC areas. By comparison, the average AT&T area payphone will remain viable during these periods. From this information, the PAO concludes that mirroring AT&T's highest rural rate band will preserve the public payphone communications infrastructure.

Responding to the ILECs objection that the NST would be burdensome, the PAO proposes that, as an alternative, the ILECs be allowed to mirror AT&T's highest rural rate band. The ILECs claim that an order compelling ILECs to mirror AT&T's rural rates would be arbitrary and likely unlawful. For the ILECs to condemn the NST as burdensome and the PAO's alternative proposal as arbitrary and unlawful suggests, to the PAO, that ILECs believe that their rates should not be subject to regulatory scrutiny.

The ILECs claim that the NST will reduce the IPPs' costs and will temporarily enhance the IPPs' profits. The PAO admits that the NST would reduce the costs. Without a reduction of costs, more payphones--those that are not economically viable--will have to be removed. As an additional benefit of reduced costs, the PAO contends that competition will thrive in non-RBOC areas, promoting the public interest.

The PAO denies that it is seeking protection from competition. To the contrary, the PAO contends that ILECs are seeking to bar competition and protect their monopoly provider markups by attempting to block NST pricing.

According to the PAO, payphones do serve a universal service function. The PAO cites as examples the cases of New York City on September 11, 2001, when cell phones ceased operating and the electricity blackout in August 2003 when Verizon reported a 350 percent increase in payphone use. Another example is the placement of payphones by ILECs in low income neighborhoods. PAO members too place payphones where people are likely to need them. Often times the preferred location is in low income areas. Free access to 911, 800 numbers, 211 community services, 311, 511, 711, and 811 government communications dramatize the universal service function of payphones.

The PAO rejects the ILECs' claims that the preservation of payphones is not in the public interest. Noting that the FCC, Congress, the Commission, and other state regulatory commissions have recognized payphones as being a public interest, the PAO concludes that payphones are indeed in the public interest.

The PAO disagrees with the ILECs' claim that CLECs can provide features for payphone service. It is the PAO's understanding that CLECs in non-RBOC areas cannot provide the features for the proper operation of payphones.

As for competing against ILEC affiliates, the PAO claims that the affiliates are controlled and operated in tandem with the ILEC. If the payphone affiliates pay the same payphone access rates, the PAO questions why the ILEC affiliates have never commented or appeared in any payphone-related docket. The PAO finds this especially unusual because the ILEC-affiliated payphone companies are the largest payphone companies in the state.

(12) In support of the PAO's July 17, 2007, motion, the OCC filed reply comments on December 5, 2007. The OCC emphasizes that the PAO, through the NST, is not seeking to increase demand for payphones or reverse the decline in payphone use. The PAO acknowledges a general decline in the consumer use of payphones. By applying the NST, the PAO hopes to reduce costs and keep more payphones in operation. In its reply, the OCC provides statistical data to substantiate this claim.

The OCC disagrees with Verizon's argument that alternative regulation contains no provision for the imposition of the NST. In response, the OCC states that the Commission explicitly excluded payphone rates, terms, and conditions from alternative regulation.[3]

The ILECs contend that payphones do not serve as a universal service function or as a fallback for persons without traditional or wireless phone services. The OCC disagrees. The OCC, for support, cites the Wisconsin Order, as it did in its initial comments.

(13) Verizon filed reply comments on December 5, 2007. Highlighting comments of PAO members, Verizon concludes that, even with the imposition of the NST, demand for payphone services will continue to decrease. The decline in the

3 Rule 4901:1-6-04(B)(14), Ohio Administrative Code.

number of payphones, according to Verizon, will not adversely affect emergency response times. Verizon points out that there are significantly more telephones in service now than ever before because of the presence of wireless handsets. Verizon reiterates its argument that the Commission has no statutory authority to impose the NST.

(14) The ILECs filed reply comments on December 5, 2007. Like Verizon, the ILECs deny that there is any correlation between access rates and declining demand for payphones. Other than access line rates, the ILECs point to other reasons that may promote the removal of payphones. Factors such as unprofitable locations, business policies, and business strategies may drive the decision to remove a phone. The ILECs note that on December 3, 2007, AT&T announced its intention to exit the payphone business in its entirety. This, the ILECs argue, refutes the theory that NST-based rates can stimulate demand. The ILECs state that AT&T based its decision on reduced demand for payphones caused, in part, by the growth of wireless phones and other communication alternatives.

For lack of evidence, the ILECs criticize the PAO's claims regarding the need for public telephones. In response to the PAO's contention that payphones are necessary for 911 access, the ILECs posit that because of the proliferation of wireless communication devices, emergency response times may in fact be faster. Even though payphone removal is occurring in both RBOC and non-RBOC areas, the ILECs see no sign of complaints, public outcry, or crisis. To the ILECs, there is no impact upon the public interest because the demand for payphones is in rapid decline.

Reviewing the comments, the ILECs point out that PAO members admit that wireless services are responsible for the decline in demand for payphone services. To the ILECs, admitting that wireless services undercut payphone demand contradicts the PAO's argument that access line charges are at fault. To the ILECs, it is inconsistent that the PAO points to ILEC payphone rates as the reason why IPPs must remove increasing numbers of payphones. Noting the PAO's allegations that some phones in non-RBOC areas remain profitable, the ILECs find a contradiction. If demand remains constant and payphones are profitable, then, the ILECs argue, payphone rates must not be unreasonable.

The ILECs are critical of the PAO for failing to exhaust alternatives such as creative marketing, technological solutions, or negotiating with CLECs.

(15) Up to this point, the Commission has never ruled on whether the NST should be applied to non-BOC ILECs. The NST is a cost-based test that first determines the direct cost of providing a new service. To derive the overall price of a service, the NST adds a reasonable amount of overhead to the direct cost. In the Wisconsin Decision, the FCC concluded that it only has jurisdiction to apply the NST to BOCs only. Nevertheless, the FCC encouraged states to apply the NST to all LECs in the interest of extending a pro-competitive regime. Until now, we have dismissed the PAO's requests to apply the NST to non-BOCs without discussing the merits of the PAO's position. In our October 3, 2007, entry, we invited substantive comments on the PAO's proposals. Putting aside procedural considerations, we directed that comments address the appropriateness of current wholesale pricing levels, public interest issues, and the increasing or decreasing availability of ILEC pay telephones. Upon examination of the assertions and data now placed before us by the PAO, alerting us to an imminent threat to a public interest, we find that a review of the merits is warranted at this time.

First, we must recognize that public pay telephones, historically and currently, remain imbued with a public interest. The FCC's Wisconsin Decision, as pointed out by the OCC, is clear in its intent and purpose to preserve payphones. Interestingly, the Wisconsin Decision recognizes that payphones are on the wane, losing market share to wireless services. Nevertheless, the FCC considers payphones to be vital for emergency communications and for those who cannot afford their own telephone service. We too recognize that payphones provide an essential, alternative communications option for emergencies and for those who cannot afford wireline or wireless services.

Second, we invited comments on the increasing or decreasing availability of ILEC pay telephones. All parties agree that payphones are in a state of rapid decline. AT&T plans to exit the market entirely. The decline, all appear to agree, is attributable, in large part, to the proliferation of cellular telephones. The viability of a payphone is a function of the ILEC charge and the frequency and type of calls placed through the payphone. If payphone use declines, the IPP must rely upon fewer payphone calls to cover the ILEC's monthly payphone service rates. We acknowledge that a reduction in the ILEC charge will not, by itself, stimulate demand for payphones. We agree with the ILECs that any attempt to stimulate demand would necessitate a reduction in the payphone customer charge. We, however, appreciate the PAO's distinction between stimulating demand and preserving payphones. By reducing the ILEC payphone charge, more IPP payphones would become economically viable because each payphone would require less revenue to offset its costs. In our review of the comments, and being enlightened on the undenied and rapid removal of payphones, we are led to the conclusion that steps must be taken toward maintaining the presence of payphones.

Third, having decided that payphones serve the public interest and that steps must be taken to preserve their existence, we turn to whether current wholesale pricing levels are appropriate for payphones. The PAO, in its reply comments, provided a table showing cost and revenue comparisons for payphones in the ILECs' regions. Based on the current revenue decline of 12 percent per year, the PAO projects that by October 2009 the average payphone in non-RBOC areas will operate at a loss. Only telephones in AT&T's territory will, on average, show a net profit. This outcome could be alleviated by a reduction in ILEC payphone rates.

The data provided by the PAO and the OCC show that payphones are not only disappearing rapidly but they are disappearing more rapidly in non-RBOC ILEC areas, as compared to those located where the NST is applied. For example, from March 2003 to March 2006, the number of telephones owned by IPPs decreased from 15,224 to 9,819 in Ohio. In non-RBOC areas, IPP telephones decreased from 6,093 to 2,206. We agree with the PAO and OCC that these figures, along with others, suggest the need for urgent intervention.

(16) Upon review of the PAO's proposals and the comments, we conclude that the PAO's proposal presents a reasonable starting point for accommodating the interests of affected parties. We believe that the named non-RBOC ILECs should be given an option to file rates that comply with the NST. Some ILECs may find filing NST-based rates burdensome and costly. We, therefore, offer the alternative of filing safe harbor rates equal to AT&T's highest rural rate band with an additional ten percent. This option alleviates the burden and expense of preparing NST-compliant cost studies. The ten percent markup recognizes the different cost experience of other ILECs. For example, we are aware that most other ILECs serve a proportionally larger rural customer base than AT&T. They have more rural area, requiring longer loops, more plant, and ultimately experience higher costs. The ten percent markup reflects any advantages in economies of scope and scale that AT&T may possess relative to other ILECs. We believe that a ten percent markup, though not supported by objective data, alleviates the burden and expense of cost studies and litigation. At the same time, it offers a reasonable approximation of economic realities.

The named non-RBOC ILECs shall revise their rates in accordance with the Commission's safe harbor rate and shall put this rate into effect within 90 days of this entry. The safe harbor rate, however, shall be subject to a true-up if an ILEC proposes new rates and files an NST-compliant cost study supporting the proposed rates within six months of this entry. The ILEC must be prepared at that time to file for Commission review and approval of its NST cost study. After six months, an ILEC can propose a new rate based on an NST-compliant cost study, but it will not be subject to a true-up.

The Commission further directs the ILECs to work with staff on rate design and other tariff issues in advance of the 90-day tariff filing deadline.

It is, therefore,

ORDERED, That, in accordance with Finding (10), the PAO's motion to file amended reply comments is granted. It is, further, ORDERED, That, in accordance with Finding (16), within 90 days of this Entry Windstream Ohio, Inc.; Windstream Western Reserve, Inc.; United Telephone Company of Ohio dba Embarq aka Embarq Communications, Inc.; CenturyTel of Ohio, Inc.; Cincinnati Bell Telephone Company, LLC; and Verizon North Inc., revise their payphone access line rates pursuant to the Commission's safe harbor rate. In the alternative, these ILECs may opt to revise their rates in accordance with the NST. Any ILEC that chooses to employ the Commission's safe harbor rate may challenge those rates within six months of this entry by proposing new rates and filing an NST-compliant cost study supporting the proposed rates. It is, further,

ORDERED, That a copy of this entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Donald L. Mason

LDJ/vrm

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Reneé J. Jenkins
Secretary