FILE

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's	)	
Investigation into the Implementation of	)	Case No. 96-1310-TP-COI
Sec. 276 of the Telecommunications Act	)	
Of 1996 regarding Pay Telephone Service	)	

MEMORANDUM CONTRA OF THE PAY PHONE ASSOCIATION OF OHIO TO THE APPLICATION FOR REHEARING OF UNITED TELEPHONE COMPANY OF OHIO D/B/A EMBARQ, CENTURYTEL OF OHIO, INC., VERIZON NORTH, INC. WINDSTREAM WESTERN RESERVE, INC., AND WINDSTREAM OHIO, INC.

Pursuant to Ohio Rev. Code Section 4903.10 and Ohio Administrative Code Section 4901-1-35, the Payphone Association of Ohio ("PAO") provides these observations and objections to the granting of the Application For Rehearing of the above named parties as to the Commission's Entry of March 19, 2008 for the following reasons:

A. The Application for Rehearing asserts that the Entry is unlawful because the Commission did not hold a public hearing after proper notice. The Applicant's assert that since no public hearing was held, and no evidence introduced the Entry is unlawful. The Applicants did not raise this issue is a timely fashion and have therefore waived any right to raise the issue now.

   The Applicants had every opportunity to conduct any discovery they felt was appropriate from the time the PAO Motion was filed on July 18, 2007 at least until the Commission Entry of March 19, 2008, a period of 8 months. The Applicants could have

also filed any ILEC supporting affidavits that they felt were appropriate but chose not to do so.

The Commission had been involved in the general issues regarding payphone costs and availability of service since at least when this case was originally opened on December 09, 1996. There had been some 574 different docket entry's filed in the case. The issues considered in that lengthy process could not be all that different from the issues involved in the current PAO Motion To Preserve Ohio's Public Communications Infrastructure.

What evidence do these Applicants think is so important that would be forthcoming in a new round of hearings? They do not say. Do these Applicants really want to put on the record all of their system wide costs, or even the specific costs of service to the payphone industry? They have not volunteered to do so in this Application. If so, they could have filed sworn testimony at any stage of this part of the case.

It is apparent from the very making of the argument that there was no public hearing that the Applicants simply are grasping at any straw to prevent the institution of fair, just and reasonable rates for their service to the payphone industry.

B. The Application for Rehearing also asserts that the Entry is unreasonable because it does not limit the rate reductions to public interest payphones. This argument suggests an almost impossible standard for the determination of the appropriate rate reduction or adjustment. It suggests that the PAO should be subjected to an impossible study of all of the economic factors in every location in the state where a payphone exists, or may be installed in the future. The Federal Communications Commission ("FCC"), and

this Commission have already clearly determined that payphones are a vital service to the public and that a phone by phone investigation is not necessary to further establish that. If reasonable rates were offered by these ILEC's for the payphone service, then the market could determine which payphones were providing a public interest service.

The Applicants further raise the example of the payphones in airports as some sort of proof that those are phones not in the public interest. Tell that to the thousands of American Airlines customers who were stuck for hours, or even days, in airports all over the country in recent weeks. Tell that to the reported thousands of cell phone owners whose cell phone batteries died while they waited for a flight to anywhere. Just because those individuals had the resources to buy an airline ticket does not mean the payphones in those airports were not providing a service as a public interest payphone. Are these ILEC's really advocating that everyone be required to carry a functional cell phone with them everywhere they go? Are these ILEC's really advocating that everyone always have access to a functional cell phone everywhere they go?

These Applicants also assert that the Commission could create a Public Interest Payphone ("PIP") program to provide some sort of relief for the payphone industry and the customers of the payphone industry. Then the Applicants provide the very important information that the Indiana PIP program was a failure and was dismissed. Why would the Ohio Commission want to start down that path when it has already been demonstrated to be a failure?

C. The Application for Rehearing also asserts that the Entry is unreasonable because the safe harbor rate that it adopts is completely arbitrary and not supported by the

evidence. In the first place the safe harbor rate is not completely arbitrary. It is based on a very comparable cost of service for payphones as provided by AT&T, which is providing a very similar service to payphone locations in Ohio.

Do these Applicants really want to assert to the Commission that their costs of service are so much greater than AT&T's? If so, they have been given an alternative to the safe harbor rate by proposing new rates to the Commission and filing an NST-compliant cost study supporting the new proposed rates. Even if these Applicants have somewhat less efficient costs the Commission has provided for a 10% add on for their benefit.

D. The Application also asserts that the Commission Erred By Ordering these ILEC's to Reduce Their Payphone Rates Because They Are not Parties to This Proceeding. They made no such argument in a timely fashion. They simply sat back and let 8 months go by, possibly hoping the Commission would rule in their favor, and then if not they would assert this back-up argument.

The PAO Motion of July 18, 2007 named these specific ILEC's as the parties that were the subject of the major concerns in regard to the public interest in saving the payphone industry. Ohio Administrative Code Section 4901-1-10 provides in part as follows:

The parties to a commission proceeding shall include:

> PARTIES:
> ...
> ...
>
> (3) Any public utility, railroad, or private motor carrier whose rates, charges, practices, policies, or actions are designated as the subject of a commission investigation;

This is authority enough for the Commission to consider each of the ILEC's to be parties in this phase of the Commission investigation. They are parties, because they were originally parties, and the Commission has treated them as parties since at least the October 3, 2007 Commission Entry that provided the parties with an opportunity to file comments as to the PAO Motion.

That entry further suggested that comments should address substantive matters, not procedural impediments. The ILEC's having already availed themselves of a number of procedural arguments that they thought relevant. The Commission disagreed. 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. This entry gave the ILEC's every opportunity to provide the Commission with the relevant cost data, the relevant public interest data, and the increasing or decreasing availability of ILEC pay telephones. They apparently choose not to provide the Commission, or the PAO, with that specific information, or the information as to the NST-compliant cost study.

CONCLUSION

The Commission's Entry of March 19, 2008 is clearly lawful, reasonable, and an appropriate exercise of the Commission's authority to regulate the ILEC's in the public interest.

The Application for Rehearing should be denied and the ILEC's should be required to proceed to revise their payphone access line charges pursuant to the Commission's safe harbor rate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Memorandum Contra was served upon each of the following persons by first class U. S. mail, postage prepaid this 28th day of April, 2008.

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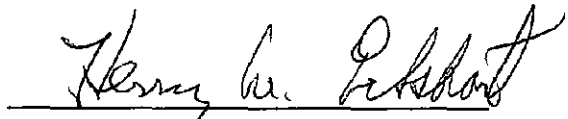

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