

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of AT&T Ohio)	
For Approval of an Alternative Form of)	Case No. 06-1013-TP-BLS
Regulation of Basic Local Exchange)	
and Other Tier 1 Services Pursuant to)	Case No. 07-259-TP-BLS
Chapter 4901:1-4, Ohio Administrative Code.)	

AT&T OHIO'S MEMORANDUM CONTRA
OCC'S JUNE 13, 2008 MOTION

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AT&T OHIO'S MEMORANDUM CONTRA
OCC'S MARCH 13, 2008 MOTION

Introduction

AT&T Ohio¹, by its attorneys and pursuant to Ohio Admin. Code § 4901-1-12(B)(1), opposes the motion filed on June 13, 2008 by the Ohio Consumers' Counsel ("OCC") seeking a "show cause" order related to the alternative regulation of the Company's basic local exchange service ("BLES") in eight exchanges that was granted in the captioned cases. OCC claims that the Commission should require the Company to show cause why its BLES alternative regulation should not be revoked. OCC Motion, p. 1.² It argues that AT&T Ohio no longer meets the 15% line loss criterion of the Commission's competitive market test 4, set forth in Ohio Admin. Code § 4901:1-4-10(C)(4). OCC, p. 2. OCC argues that the findings supporting the Commission's orders as to the eight exchanges "are no long valid." OCC, p. 10. It asks the Commission " . . . to abrogate or modify the 06-1013 Order and the 07-259 Order by beginning the process for revoking AT&T Ohio's basic service alt. reg. in the eight exchanges." OCC, p. 10. OCC argues that this process " . . . should be conducted no less expeditiously than the expedited time line for granting [alternative regulation] in the first place." OCC, p. 10. Based on this scant showing, the Commission should not proceed further and should deny OCC's motion.

OCC's claims are without merit and do not support turning back the clock on the progressive steps in regulatory reform that the Commission has taken. As it did in its first such motion, filed on March 13, 2008 OCC ignores all of the marketplace realities in the eight

¹ The Ohio Bell Telephone Company uses the name AT&T Ohio.

² In this pleading, citations to OCC's motion are shown as "OCC Motion, p. x" while citations to its memorandum in support are shown as "OCC, p. x."

exchanges in question. As shown here, competition is alive and well in those exchanges, as it is elsewhere in AT&T Ohio's territory. Intermodal competition has exploded. To use the terms used by OCC in connection with its first such motion, competition has not "eroded" and consumer choice has not "deteriorated" in those exchanges or anywhere in AT&T Ohio's territory. OCC Reply, April 10, 2008, p. 8. OCC's claims are contradicted by marketplace conditions and by the fact that AT&T Ohio's exchanges have been irreversibly opened to competition pursuant to the Telecommunications Act of 1996. AT&T Ohio's state- and federally-sanctioned entry into the interLATA long distance market is positive proof of competition in all of AT&T Ohio's exchanges, OCC's hollow protestations notwithstanding.

The competitive telecommunications marketplace changes daily. A BLES alternative regulation revocation proceeding should not be initiated by the Commission without a clear showing by the moving party of a substantial marketplace failure that would render such alternative regulation contrary to the public interest. Behind all of OCC's rhetoric lies a very thin reed - - the temporary increase in ILEC line counts in eight exchanges. This is no more substantial a showing than that in OCC's previous motion, where it was alleged that only one of the alternative providers relied upon by AT&T Ohio had ceased doing business as a separate entity and had transferred its remaining customer base to another of the alternative providers. AT&T Ohio's Memorandum Contra, March 31, 2008, p. 3. A temporary increase in the Company's line counts in eight exchanges is an insignificant fact that cannot reasonably form the basis for the Commission to even initiate a revocation proceeding, much less the ultimate revocation of BLES alternative regulation authority that OCC seeks. The statute and the rule must require more than this thin reed before such a revocation would even be considered by the

Commission. OCC has not made a clear showing of a substantial marketplace failure that might justify reexamining the Company's eligibility for BLES alternative regulation in the eight exchanges in question. Again, to use OCC's own terms, OCC has not shown how consumer choice has *deteriorated* or how the competitive marketplace has *eroded*. OCC Reply, April 10, 2008, p. 8.

OCC ignores the threshold nature of the competitive tests. They were intended to - - and do - - provide a means of meeting the statutory requirements that there is ample competition, no barriers to entry, and that BLES alternative regulation is in the public interest. The FCC has adopted threshold tests in several instances and its rules do not require any further showings once those tests are met.³ And, just as it rejected the notion of "periodic reviews" of BLES alternative regulation, once granted, in the 05-1305 rules proceeding, this Commission should reject OCC's suggestion that the competitive tests need to be met on an on-going basis without regard to other marketplace conditions or other relevant factors. In rejecting the Consumer Groups' proposal for a review of an ILEC's BLES alternative regulation plan on the fourth anniversary of the plan, the Commission said it saw "little to be gained" by that proposal. Case No. 05-1305-TP-ORD, Opinion and Order, March 7, 2006, p. 51. Similarly, there is little to be gained - - and much to be lost - - if the Commission were to initiate a revocation proceeding based on the thin reed offered by OCC here.

³ See, 47 C.F.R. § 51.319(a)(4) and (5) (providing that once a wire center exceeds the stated competitive thresholds, no future loop unbundling will be required in that wire center).

Lastly, OCC also ignores the fact that any revocation action taken by the Commission implicates AT&T Ohio's due process rights under both the United States and Ohio Constitutions and the Ohio Revised Code.

Background

OCC's motion is the second of its kind filed under the BLES alternative regulation rules. The Commission has not ruled on the first such motion, filed on March 13, 2008. As it should with the first motion, the Commission should approach this motion with circumspection. It must be heedful of the circumstances and future consequences of any action it takes here. While OCC was quick to respond - - and has now fired two shots - - after its defeat in the Ohio Supreme Court⁴, the Commission should approach this matter carefully and deliberately.

The rule on which OCC relies requires that a stakeholder set forth "reasonable grounds" that the market has changed. The rule also provides that, based on its review of a stakeholder's alleged reasonable grounds, the Commission may take whatever action it deems necessary, if any, including initiating an investigation or scheduling a hearing, to consider revocation of the alternative regulation for BLES and other tier one services in a telephone exchange area. The rule also states that, pending any review of alternative regulation of BLES, the ILEC will maintain the pricing flexibility previously granted until or unless otherwise modified by the Commission. Ohio Admin. Code § 4901:1-4-12(B). OCC also cites the relevant portion of the enabling statute. That provision, cited in the rule, reads as follows:

The public utilities commission has jurisdiction over every telephone company providing a public telecommunications service that has received an exemption or for which

⁴ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861.

alternative regulatory requirements have been established pursuant to this section. As to any such company, the commission, after notice and hearing, *may* abrogate or modify any order so granting an exemption or establishing alternative requirements *if it determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest*. No such abrogation or modification shall be made more than five years after the date an order granting an exemption or establishing alternative requirements under this section was entered upon the commission's journal, unless the affected telephone company or companies consent.

R. C. § 4927.03(C) (emphasis added). These provisions *permit*, but do not *require*, the Commission to abrogate or modify its orders in certain circumstances, subject to the applicable restrictions. If the Commission exercises its discretion to undertake a further review based on "reasonable grounds" set forth in a stakeholder's motion, it must then determine, after notice and hearing, that (1) the findings upon which the order was based are no longer valid; and (2) that the abrogation or modification is in the public interest. It is important to note that, as a threshold matter, and in order to even begin this process, OCC must state "reasonable grounds," which it has not done here.

OCC's Motion Is Not Ripe For Consideration

OCC concedes that AT&T Ohio has not increased any of its residential BLES rates under the authority it received in these two cases. OCC, p. 9. Yet, it seeks to "protect" the customers in the eight exchanges from "unlawful rate increases." OCC, p. 2. Under the rule quoted above, however, AT&T Ohio's BLES alternative regulation in the eight exchanges in question is valid "until or unless" it is modified by the Commission. Ohio Admin. Code § 4901:1-4-12(B). The OCC continues to overlook the fact that the Ohio Supreme Court has

validated the rules and the order in the first AT&T Ohio case, and in a separate proceeding involving Cincinnati Bell, under which BLES alternative regulation was granted.⁵

It is also the case that the process requested by OCC is simply not necessary. AT&T Ohio has not exercised any of the BLES alternative regulation authority with respect to any customer in any of the eight exchanges. OCC argues that even *attaining* pricing flexibility and the associated *ability* to raise rates should be enough for the Commission to begin a revocation proceeding. OCC, p. 9. The statute does not support OCC's interpretation. As explained above, the statute *allows* (but does not *require*) the Commission to abrogate or modify any order granting an exemption or establishing alternative requirements if it determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest. This is yet another reason why the OCC has failed to state reasonable grounds, as it is required to do under the applicable rule.

OCC's Motion Lacks Merit

In addition to being untimely, OCC's motion lacks merit under any reasonable interpretation of the statute and the rule. OCC continues to question "if there ever was a time . . ." that the public interest was served by BLES alternative regulation, arguing that "that time has passed." OCC, p. 9. OCC further argues that "[t]he grant of basic service alt. reg. to AT&T Ohio in the eight exchanges *is unlawful*, and therefore not in the public interest." OCC, p. 10

⁵ The decision in the appeal in the Cincinnati Bell case is reported as *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 289, 2008-Ohio-860. OCC properly dismissed its appeal of the second AT&T Ohio BLES alternative regulation order in light of the Court's decisions.

(emphasis added). OCC seems to suggest that any "change in the circumstances" warrants the commencement of a show cause proceeding. OCC, p. 10.

OCC's arguments change with the wind. In its previous motion, filed on March 13, 2008, it stated it "does not concede that the 'competitive tests' substitute for the showing required by R. C. [§] 4927.03." As AT&T Ohio pointed out, there is no need for a "concession" on this point; the Ohio Supreme Court unanimously disposed of that issue. AT&T Ohio's Memorandum Contra, March 31, 2008, p. 7. Now, OCC painfully admits that the Commission's rules "contain four 'competitive tests' that are *meant to be* a surrogate for the statutory criteria for determining whether to allow an ILEC to increase its rates charged to customers for basic service. OCC, p. 5 (emphasis added). As OCC knows, the Ohio Supreme Court was even more direct in connecting the rules to the statute:

Ultimately, OCC is appealing the rules that the commission adopted to streamline its review for alternative treatment under the statute. *The rules*, as applied to the facts in this case, *satisfy the statutory factors* needed to award alternative treatment. The commission made appropriate factual determinations. OCC's arguments to the contrary are rejected, and the commission's order is affirmed.

Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, 2008-Ohio-861, ¶ 52

(emphasis added). While the competitive tests were "meant to be" - - and are - - a surrogate for the statutory criteria, they do not reflect the only permissible interpretation or application of the statutory criteria. OCC would put the Company and the Commission in a regulatory straitjacket and require on-going adherence to the competitive tests regardless of other marketplace conditions. The better course is for the Commission, if it so desires and only after the OCC sets forth reasonable grounds that there has been a substantial failure in the marketplace, to examine

current conditions in the marketplace in order to determine whether to initiate a revocation of BLES alternative regulation.

OCC notes that AT&T Ohio used Test 4 as the basis for each of the eight exchanges in question and that the Commission granted relief on that basis. OCC, p. 5. The Company's first application was compiled using June 30, 2006 data. 06-1013, Memorandum in Support of Application, August 11, 2006, p. 3. Its second application was compiled using December 31, 2006 data. 07-259, Memorandum in Support of Application, March 9, 2007, p. 3. Now, using data gleaned from AT&T Ohio's 2007 annual report, OCC asserts that "the market in the eight exchanges has changed such that AT&T Ohio no longer meets Test 4 in those exchanges." OCC, p. 6.⁶

OCC's motion presents the question of what steps, if any, the Commission should take if the test 4 line loss count temporarily drops below 15% in a given exchange. OCC offers no proof that the circumstances presented are anything but temporary. As it did when one carrier disbanded and its customers were transferred to another one in the context of its first motion, OCC continues its long battle against BLES alternative regulation in any form. OCC appears to argue that *any change* in the marketplace justifies revisiting the granting of BLES alternative regulation. This approach, however, would require a continuous updating of the data to account for the presence and absence of qualifying competitors and alternative providers, changes in the data underlying their qualifications, and changes in the ILEC line loss calculations.⁷ OCC would then also likely call for a continuing analysis of the "barriers to entry" and "public interest" tests

⁶ OCC displays this argument in the table on OCC, p. 7.

⁷ It should be remembered that AT&T Ohio filed thousands of pages of data supporting its application in Case No. 06-1013-TP-BLS.

as well, because this would suit OCC's agenda. Besides being poor public policy, the statute and the rule do not call for such a process. Such a process should not be triggered by a stakeholder's insubstantial and unreasonable claims.

The Commission has already recognized and dealt with the issue of changes in the marketplace. In adopting the BLES alternative regulation rules, it stated:

Nonfacilities-based alternative providers are entities that can be in the market today and gone tomorrow, with no investment in facilities to indicate the serious commitment to the provision of alternative services to BLES.

Case No. 05-1305-TP-ORD, Entry on Rehearing, May 3, 2005, p. 15. It went on to say:

Inasmuch as the telecommunications market is continuously evolving, the Commission cannot pigeonhole a competitive market analysis via one specific test.

Id., p. 18. Test 4 requires an ILEC to show a 15% lines loss since 2002 (based on its annual report filed in 2003) as well as the presence of at least five unaffiliated facilities-based alternative providers serving the residential market. Ohio Admin. Code § 4901:1-4-10(C)(4).

Here, the Commission adopted a reasonable and practical approach to the application of the statutory criteria in the implementation of BLES alternative regulation. OCC would upset all of this work with its hyper-technical reliance on a temporary line loss increase that may be due to circumstances that do not even bear on the marketplace conditions.

The tests the Commission developed to implement the statute call for a snapshot in time of competitive data and line loss counts that can be used to meet the tests. The tests were designed as thresholds to assure the presence of ample competition that would support additional pricing flexibility for the ILECs. AT&T Ohio's applications provided that appropriate snapshot in time for the eight exchanges and provided valid proof of the 15% line loss metric and the

existence of unaffiliated facilities-based alternative providers serving the residential market. The competitive tests are threshold tests; they are not permanent benchmarks that are etched in stone that must be monitored and met every day. As threshold tests, they are intended to provide a means of meeting the statutory requirements that there is ample competition, no barriers to entry, and that BLES alternative regulation is in the public interest. On this point, the Supreme Court stated as follows:

We find that the commission appropriately relied on the statutory amendments and *created lawful and reasonable tests* to effectuate those changes. Likewise, we affirm the commission's factual determinations in approving AT&T's application.

Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, 2008-Ohio-861, ¶ 2

(emphasis added).

The statute and the rule must be accorded a reasonable interpretation, contrary to OCC's claims. OCC has asserted that, in order to retain alternative regulation authority, ILECs must meet the competitive criteria on an on-going basis. OCC Reply, April 10, 2008, p. 5. To this very point, OCC has provided no evidence of a reduction in competition in the eight exchanges. The temporary increase in AT&T Ohio's line counts (and the corresponding reduction in its line loss percentage) could be the product of many factors, and might not even result from the reduction of any particular unaffiliated CLEC's line counts. OCC thus fails to state reasonable grounds. The Commission should only consider revocation of BLES alternative regulation in a given exchange if there has been a substantial failure of the marketplace. The burden should be on the OCC to demonstrate that a substantial marketplace failure has occurred. OCC has not done this and cannot do this. The temporary increase in an ILEC's line count can by no means be considered a substantial failure of the marketplace. The competitive

marketplace is working. This is demonstrated by the ease of competitive entry and exit. The facts presented by OCC provide no basis for beginning the process to revoke AT&T Ohio's BLES alternative regulation authority that OCC seeks.

The Relief Sought By OCC Would Not Serve The Public Interest

It should be clear by now that OCC does not like BLES alternative regulation in any form. This is true even when it has been granted under Commission rules which have been validated by the Ohio Supreme Court. On the public interest issue, the Court said the following:

Moreover, the public-benefit finding is a factual determination made by the commission. Its finding that AT&T met the requirements for a showing of public interest will not be disturbed by this court absent a demonstration that it is clearly unsupported by the record. AT&T, 88 Ohio St.3d at 555, 728 N.E.2d 371. OCC has made no such showing.

Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, 2008-Ohio-861, ¶ 50.

Perhaps the best response to the OCC's argument in this regard is that AT&T Ohio's exchanges have been irreversibly opened to competition pursuant to the Telecommunications Act of 1996. AT&T Ohio's state- and federally-sanctioned entry into the interLATA long distance market - - which occurred almost five years ago, on October 24, 2003 - - is proof of this. That entry 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."⁸ In his letter to the FCC accompanying the Commission's report, Chairman Schriber stated as follows:

⁸ *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.

" . . . 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 SBC Ohio's network for the purpose of satisfying the requirements of the 1996 Act, is open to competitors on a non-discriminatory basis.⁹

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.¹⁰

* * *

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.¹¹

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

⁹ Id., letter to FCC Commissioners from Chairman Alan R. Schriber, June 26, 2003.

¹⁰ Id., Commission Report and Evaluation, June 26, 2003, p. 23.

¹¹ Id., p. 266.

into the local exchange markets of the four applicant states have been removed, and that these local exchange markets are open to competition.¹² (p. 103)

These findings conclusively establish that AT&T Ohio has removed barriers to entry in its local exchanges. Nothing OCC says can bring them back.

In addition to addressing local exchange service competition in the long distance entry case, the FCC also 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

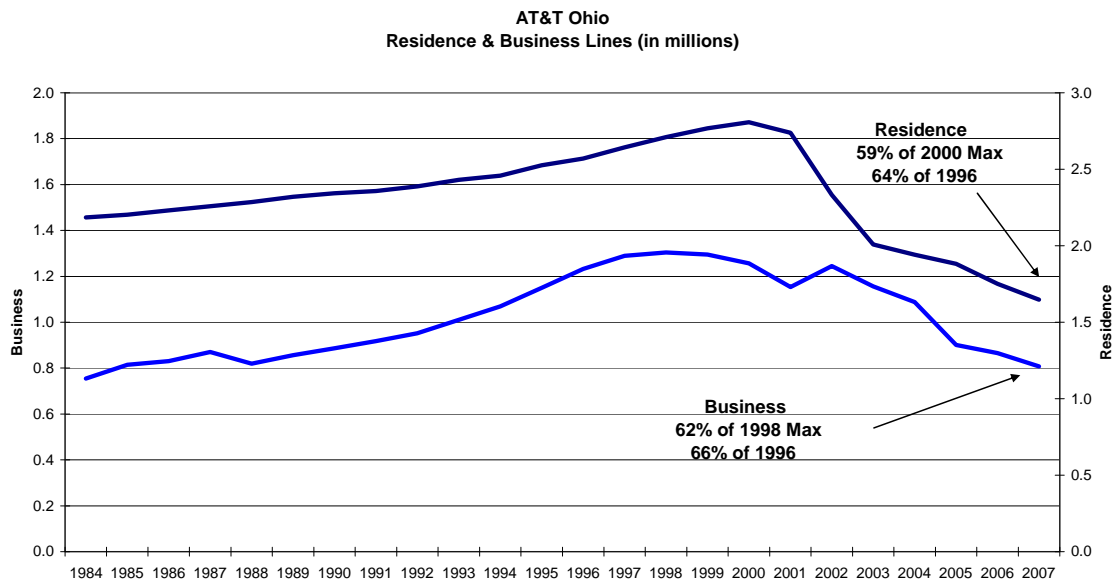
Based on the evidence of deployment and use of circuit switches, packet switches, and softswitches, and changes in incumbent LEC hot cut processes, we determine not only that competitive LECs are not impaired in the deployment of switches, but that it is feasible for competitive LECs to use competitively 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.¹³

The language here is important because it represents a declaration by the FCC that there are no barriers to entry for competitors. The Commission cannot ignore these marketplace conditions.

¹² *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.

¹³ *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.

There is no question that competition in AT&T Ohio's exchanges has continued to increase, and as stated many times before, is irreversible. AT&T Ohio's retail access lines, both residential and business, have continued to decrease. In fact, there were fewer residential access lines at the end of 2007 than there were in 1984. Decades of stable and consistent access line growth have been erased in a relatively few years, as shown in the following chart:



There are many studies that confirm that competition for access lines has significantly increased. For example, a recent report issued by the FCC's Wireline Competition Bureau (Wireline Report) shows that in Ohio for June 2007, CLECs have an 18% share of the end user lines served by LECs. *Local Telephone Competition: Status as of June 30, 2007*, Industry Analysis and Technology Division, Wireline Competition Bureau, March 2008, Table 7.¹⁴

¹⁴ See, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280943A1.doc. It is worth noting that the Nationwide CLEC share is also 18%, the same as Ohio's. Wireline Report, Table 7.

While the 18% represents the CLECs' share of lines provided to residence and business lines, utilizing data from the Wireline Report's Tables 10, 11, and 12, one may determine that CLECs have a 16.6% share of residence lines:

Total ILEC End User Lines Table 10	Total CLEC End User Lines Table 11	Pct of Lines Provided to Res Table 12	Residence Lines	Pct Share of Residence Lines
4,973,233		66%	3,282,334	83.4%
	1,068,758	61%	651,942	16.6%
			3,934,276	

While the percentage of lines that Ohio ILECs provide to residence customers (66%) is close to the ILEC nationwide average (64%), Ohio's CLECs provide a much greater share of their lines to residence customers (61%) compared to the CLECs' nationwide average (42%). (Wireline Report, Table 12).

The Report also notes that 72% of Ohio's zip codes have 4 or more CLECs; 33% of zip codes have an astonishing ten or more CLECs; and only 3% of zip codes do not have any CLECs. (Wireline Report, Table 17). CLEC competition is vibrant in Ohio, but that is only part of the story. One must also examine competition from wireless and VoIP providers.

The FCC has also issued its most recent Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, Twelfth Report, WT Docket No. 07-71, Released February 2, 2008 (Wireless Report), which documents the

significant increase in wireless subscribership and competition.¹⁵ The Wireless Report shows that for June 2007, there were 8,722,523 mobile wireless telephone subscribers in Ohio. (Wireless Report, Table 14). Perhaps most notably, the number of wireless subscribers exceeds the number of lines provided by LECs by 2.68 million. And of the total of Ohio lines provided by LECs plus wireless subscribers, ILECs - - which once dominated the marketplace - - have slightly over one-third of the total.¹⁶ Or, said another way, the number of Ohio wireless subscribers plus the number of lines provided by CLECs is nearly *twice* the number of lines provided by ILECs:

	Lines Subscribers	Percent Share	
Ohio ILEC Lines	4,973,233	33.7%	Table 10
Ohio CLEC Lines	1,068,758	7.2%	Table 11
Ohio Wireless Subscribers	8,722,523	59.1%	Table 14
Ohio Total	14,764,514		

The Wireless Report shows that:

- More than 95% of the U.S. population lives in areas with at least three mobile telephone operators competing to offer service, and more than half of the population lives in areas with at least five competing operators. (Wireless Report, p. 5)
- Concentration in the U.S. mobile telephone market, as measured by the Herfindahl-Hirschman Index (“HHI”), declined from 2706 at the end of 2005 to 2674 at the end of 2006. No single competitor has a dominant share of the market. (Wireless Report, p. 6)
- The nationwide mobile penetration rate at year end 2006 rose to approximately 80 percent of approximately 300 million people in the United States. (Wireless Report, p. 6)
- During the second half of 2006, 11.8 percent of U.S. adults lived in households with only wireless phones, up from 7.8% in the second half of 2005, and triple the percentage (3.5 percent) in the second half of 2003. (Wireless Report, p. 10)

¹⁵ See, http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-28A1.pdf.

¹⁶ Here again, the nationwide ratio for ILEC lines, CLEC lines, and wireless subscribers is nearly identical to Ohio's ratio. Calculated from data in Wireline Report, Tables 10, 11, and 14.

- [During the second half of 2006], one in four adults aged 18 – 24 years lived in households with only wireless telephones, and nearly 30 percent of adults aged 25 – 29 years lived in wireless-only households. (Wireless Report, p. 10)

All of this information demonstrates that competition is alive and well and that basic local exchange service alternative regulation is in the public interest.

OCC's Approach Would Hamstring The Commission And The ILECs

Just as it did in opposing the applications in these cases, OCC invents new tests and processes that it believes now should apply in considering the revocation of BLES alternative regulation authority. Its approach would unnecessarily and improperly bind both the Commission and the ILECs.

OCC asks the Commission to establish a procedural schedule for the revocation of the Company's BLES alternative regulation in the eight exchanges. OCC, p. 11. It invents its own rules in this regard. OCC believes the Company must be "limited to an attempt to demonstrate (somehow) that AT&T Ohio still meets both criteria of Test 4 in the eight exchanges." OCC, pp. 11-12. Neither the statute nor the rule call for such a limitation, and it does not make sense in any event. As the Commission is aware, the telecommunications marketplace is ever-changing and ever-evolving. New technologies displace old ones. New carriers and alternative providers arrive on the scene while others depart. The use of wireless and VoIP services has exploded.¹⁷ Clearly, the telecommunications marketplace has significantly changed since the adoption of the Telecommunications Act of 1996, since the passage of Am. Sub. H. B. 218 in 2005, and since the Commission adopted its BLES alternative

¹⁷ The evolution of VoIP service itself shows that the Commission should update its rules to account for the significant impact this service has had in the marketplace. Anyone with a broadband connection has access to a multitude of VoIP providers.

regulation rules in 2006. It has also changed since the applications in these cases were ruled upon by the Commission. The changes have increased competition and consumer choice, not reduced them, as OCC suggests. In all of the exchanges in AT&T Ohio's territory, and the exchanges throughout Ohio as evidenced in the attached June 2008 report issued by the Ohio Telecom Association¹⁸, the local exchange telecommunications marketplace is irreversibly open to competition.

OCC also suggests that the Company should not be allowed to challenge the disqualification of any alternative provider (if that becomes an issue), because the Company did not seek rehearing of the orders in 06-1013 or 07-259. OCC, p. 12, note 26. Here, it invents another restriction in proposing that previously disqualified providers could not be included. OCC, p. 14, note 30. OCC would also not allow the Company to show that it met a competitive test other than the one it chose in its application. OCC, pp. 13-14. To do so, according to OCC, the Company would have to "start over" with a new application for each affected exchange. Id. These suggestions are nonsensical and they unreasonably put the entire burden on the Company and none on the OCC, the movant here.

OCC tripped on largely irrelevant facts in the Company's 2007 annual report and launched a new assault to complement its motion filed on March 13, 2008. OCC appears to monitor the marketplace and make recommendations concerning CLEC, wireless, and VoIP alternatives on its website. But it apparently feels it has no obligations here beyond launching such assaults in light of the Supreme Court's invitation to it that "OCC can notify the commission

¹⁸ Telecom Competition in Ohio, Biennial Report of the Ohio Telecom Association, June 2008, Ohio Telecom Association, http://www.ohio telecom.com/pdfs/2008_Competition_Report.pdf.

if any conditions change." OCC, p. 1, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861, ¶ 37. This invitation, of course, does not mean that *any* change in conditions requires the Commission to initiate a show cause proceeding. The change relied on here by OCC cannot satisfy the rule's requirement that OCC state reasonable grounds in support of its motion.

As with the first such motion filed by OCC, the Commission needs to be very mindful of the slippery-slope onto which the OCC is asking it to step. The type of constant monitoring that OCC recommends would mire both the Commission and the parties in a never-ending and needless process. As mentioned above, AT&T Ohio filed thousands of pages of data supporting its applications in 06-1013 and 07-259. Constantly updating this data, as the OCC appears to urge, would be absurd. It would be akin to constantly adjusting rates to account for changes in utility earnings for the traditional rate-of-return companies. The Commission would not be equipped to perform that task, nor would the public interest support it. Given the pace of change in the marketplace, the Commission must exercise caution in initiating the review requested by OCC or it could be faced with revisiting its BLES alternative regulation decisions, and potentially holding a formal hearing, each and every time there is a perceived change in the carrier mix or ILEC line count in a given exchange. OCC's motion does not set forth reasonable grounds to even begin down that path.

Any Revocation Action Implicates AT&T Ohio's Due Process Rights

OCC fails to recognize the important due process rights that are implicated by its request, but is clear that the due process rights guaranteed by the United States and Ohio

Constitutions apply in administrative proceedings. *Loneragan v. State Med. Bd. of Ohio*, 2006-Ohio-6790, at ¶ 9, citing *Urban v. State Med. Bd. of Ohio*, Franklin App. No. 03AP-426, 2004-Ohio-104, at ¶ 25. By granting AT&T Ohio BLES alternative regulation, the Commission has given the Company a significant property interest that is subject to due process protections. Furthermore, R. C. § 4927.03(C) gives the Commission the discretion to investigate previous grants of alternative regulation and to abrogate such grants only after notice and hearing. Clearly, OCC has not given the Commission just cause to even initiate such an investigation.

Conclusion

For all of the foregoing reasons, OCC's motion should be denied.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly
Jon F. Kelly (Counsel of Record)
Mary Ryan Fenlon
AT&T Services, Inc.
150 E. Gay St., Rm. 4-A
Columbus, Ohio 43215

(614) 223-7928

Its Attorneys



Telecom Competition in Ohio

**Biennial Report of the
Ohio Telecom Association**

June 2008

Executive Summary

In 2006, the Ohio Telecom Association issued a report that quantified the impact of competition on telecommunications providers throughout the state. This biennial update benchmarks changes to the industry over the past two years. Information was gathered from the Federal Communications Commission, state and national telecom associations, and national research firms.

The 2008 report concludes that telecom competition in Ohio continues to grow. Following are key findings:

- The number of broadband customers has more than doubled since the last study, increasing from 1.8 million in 2006 to 3.9 million in 2008.
- Approximately 95% of homes in Ohio have access to broadband service, available from 86 competitors across the state.
- There are now 8.7 million cell phone users in Ohio, up 9% since 2006. This, the biggest sector of the telecom market, is served by 12 competitors.
- The average Ohioan reports paying \$39 per month for local phone service and calling features. Although basic rates vary across the state, 25% of the total cost is for taxes, surcharges and mandated fees.
- The 42 Incumbent Local Exchange Carriers in Ohio have lost 600,000 lines (11%) over the past two years and 2.1 million lines (30%) since 2001 to competition and alternative technologies.
- The 24 Competitive Local Exchange Carriers in Ohio have acquired 18% of the market-share for local telephone service, up from 15% in 2006. CLECs are present in 97% of Ohio zip codes.
- Local phone service is also offered by cable television companies, such as Time Warner, using a technology known as Voice Over Internet Protocol (VOIP). These companies are *not* classified as ILECs or CLECs and are largely deregulated. There are 15.7 million “cable telephone” customers nationwide.

For additional information, please contact Charley Moses, President, Ohio Telecom Association, 614-221-3231, or moses@ohiotelecom.com

Overview of Telecom Competition in Ohio

There are hundreds of telecom providers across the state vying for local, long distance, wireless, video and Internet customers. Advances in technology have made it possible for these providers to expand beyond their traditional services and into each other's territories. Local telephone companies now transmit television channels over phone lines to compete with cable and satellite. Cable TV companies now provide phone service over their television wires. High-speed Internet is delivered over satellite, cellular, phone, cable and fixed wireless networks.

Ohio consumers can choose from dozens of providers and technologies, including:

- Landline
- Cellular
- Satellite
- Cable
- Voice Over Internet Protocol (VOIP)
- Fixed Wireless
- Web Cams / Video Calling
- Text Messaging
- Email / Instant Messaging

Table 1 – Telecom Service Providers¹

Type of Carrier	Ohio	U.S.
Incumbent Local Exchange Carriers (ILECs)	42	1,311 ¹
Competitive Local Exchange Carriers (CLECs)	24	1,261 ¹
Long Distance Providers	243	300 ¹
Cellular Providers	12	161 ¹
Cable Television Providers	21	565 ²
Broadband Providers	86	1,360 ¹
End-user VoIP Service Providers	246	246 ¹

The most notable developments since 2006 are the growth of the wireless industry and the roll-out of landline voice services by cable television providers. In the case of wireless, the number of subscribers

¹ Reporting to the FCC.

² Estimate of system owners. The cable industry reports individual systems, not company ownership.

has increased 700,000, and wireless revenues have risen 27%. Since rolling out local phone service, cable companies have already acquired 15% of the market share, where available.

Telecom Revenues

Telecommunications in Ohio is now an annual \$14.9 billion industry with wireless leading the pack among all providers.

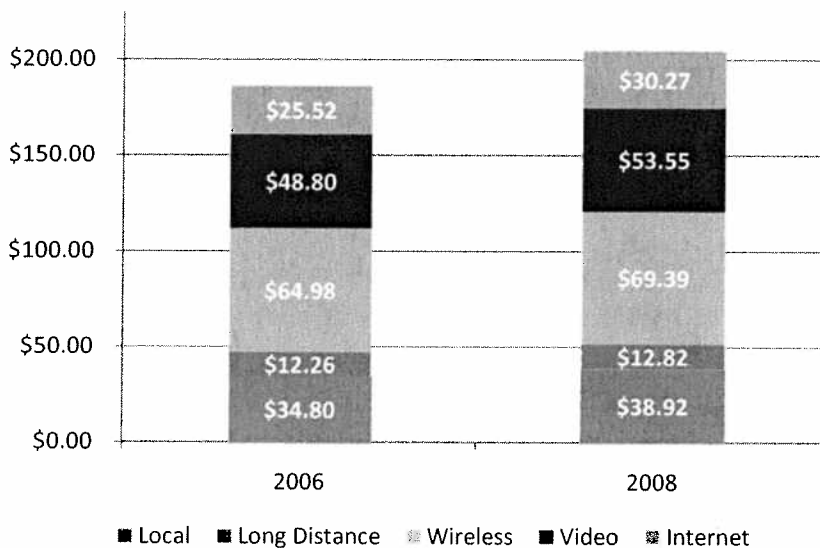
Table 2 – Annual Revenues

SERVICE	YE2005	YE2007
Local Voice (ILEC and CLEC)	\$3.2 Billion	\$3.3 Billion
Long Distance	\$2.5 Billion	\$2.5 Billion
Mobile Wireless	\$3.3 Billion	\$4.2 Billion
Subscription Video	\$2.1 Billion	\$2.4 Billion
Internet and Broadband	\$1.5 Billion	\$2.5 Billion
TOTAL	\$12.6 Billion	\$14.9 Billion

Total telecom revenues have increased 18% over the past two years.

Year after year, customers are spending more on telecommunications. The average monthly bill for those with all services is now \$204.95

Chart 1 – Consumer Spending



Since 2006, household spending on all telecommunications services has increased 10%, from \$186 to \$205 per month.

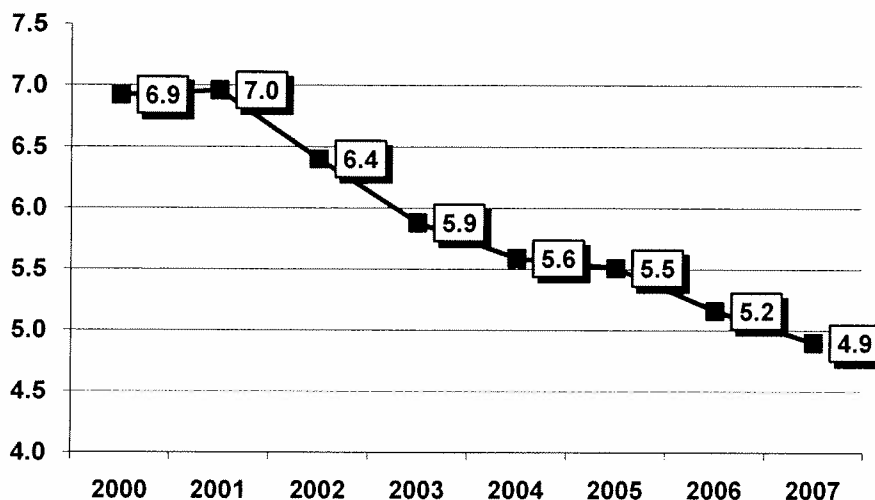
Cellular and subscription video account for the majority of monthly spending. The average consumer's cell phone bill is more than local and long distance combined. Internet spending has increased, due to the 2.1 million new broadband customers since 2006.

Local Telephone Companies

Telephone companies, also known as Incumbent Local Exchange Carriers (ILECs) or telcos, provide local phone service to defined geographic areas. In Ohio, there are 42 ILECs. They are regulated by the Federal Communications Commission (FCC) and the Public Utilities Commission of Ohio (PUCO).

Traditional home telephone service is in decline, rapidly being replaced by wireless, VoIP and Internet communications. Since peaking in 2001, Ohio ILECs have lost 2.1 million lines.

Chart 2 – ILEC Lines in Ohio (in Millions)



According to a recent study by the Organization for the Promotion and Advancement of Small Telecommunications Companies, (OPASTCO), ILECs are losing lines at a rate of 6% per year. Continuing at this rate, ILECs will lose an additional 20% of their lines by 2011.

Ohio ILECs were formed long before the Internet, wireless and video revolutions. Many have been around for more than 100 years. The larger phone companies are familiar names and provide phone service to major cities. The smaller telcos are less known and were formed to provide phone service in rural areas and small towns.

Large Incumbent LECs in Ohio

AT&T Ohio	CenturyTel	Verizon
Cincinnati Bell	Embarq	Windstream

Ohio ILEC Stats

42 ILECs in Ohio.

7 large, regional telcos.

35 small, mostly rural, independent telcos.

\$3.3 billion in annual revenues.

Customers report spending \$39 a month on local phone service, 25% of which is for taxes, surcharges and mandated fees.

30% of lines have been lost to competition and alternative technologies over the past 7 years.

Telcos are diversifying with video and broadband to survive landline losses.

70% of telcos are also video providers.

97% are Internet and broadband providers.

ILECs are regulated by the Public Utilities Commission of Ohio and the Federal Communications Commission.

Small ILECs in Ohio

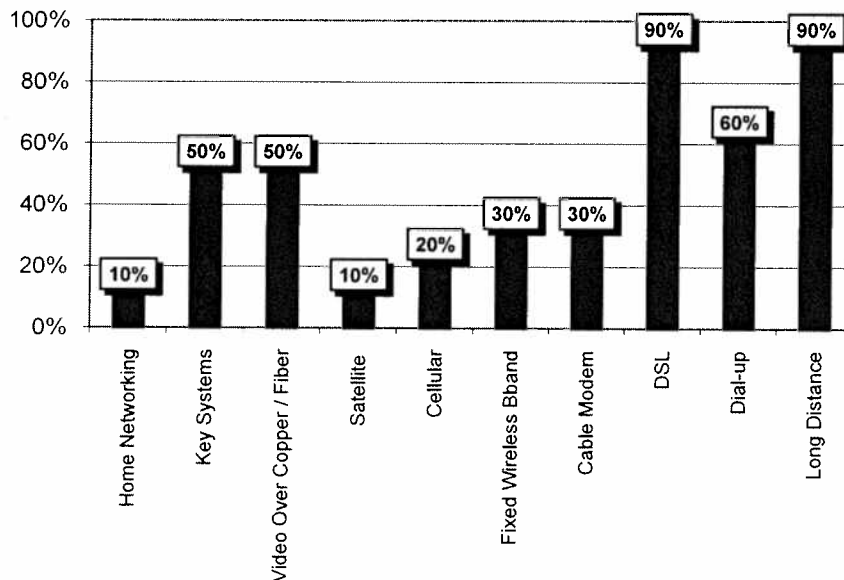
The 35 small ILECs serve approximately 5% of the population throughout rural areas and small towns in Ohio. Also known as the “independents,” these ILECs range in size from 500 to 30,000 access lines.

Small Incumbent LEC's in Ohio

Arcadia (TDS)	Arthur Mutual	Ayersville
Bascom Mutual	Benton Ridge	Buckland
Champaign	Columbus Grove (FairPoint)	Conneaut
Continental (TDS)	Doylestown	Farmers Mutual
Fort Jennings	Frontier	Germantown (FairPoint)
Glandorf	Horizon Chillicothe	Kalida
Little Miami (TDS)	McClure	Middle Point Home
Minford	New Knoxville	Nova
Oakwood (TDS)	Orwell (FairPoint)	Ottoville Mutual
Pattersonville	Ridgeville	Sherwood Mutual
Sycamore	Telephone Service	Vanlue (TDS)
Vaughnsville	Wabash Mutual	

With the demand for local phone service declining, the small ILECs are diversifying to compete as wireless, video and broadband providers. A recent survey by the Ohio Small Local Exchange Carriers Association reports the percentage of the small ILECs offering other telecom services:

Chart 3 – ILEC Lines of Business



Ohio Small ILEC Stats

35 Small ILECs in Ohio.

Serve primarily rural areas and small towns throughout Ohio.

Spend \$550 per year per access line on network maintenance and upgrades.

Total annual infrastructure investment is \$135 million.

The average independent serves 1,300 access lines (excludes Horizon Telcom, with 30,000 lines.)

Average annual revenues are \$1.3 million (again, excluding Horizon).

Three of the small telcos have formed CLECs (see next section) and have expanded their service areas, as a business diversification strategy.

The small independent ILECs are also regulated by the Public Utilities Commission of Ohio and the Federal Communications Commission.

CLEC Competition

Competitive Local Exchange Carriers (CLECs) are phone companies that were formed after the 1996 Telecom Act to provide local telephone service in competition with an incumbent provider.

Ninety-seven percent (97%) of all zip codes in Ohio are served by at least one CLEC, up from 94% in 2006. One-third of Ohio zip codes have 10 or more CLECs present.

Unlike ILECs, CLECs are not required to provide universal service to a community and can target only the customers they want to acquire. As a result, the average CLEC is composed of 80% business customers and only 20% residential customers, an almost direct inverse of ILECs, which are *required* to make service available to all residents and businesses within their service areas.

Table 3 – ILEC vs. CLEC Customer Composition

	Residential	Business
ILEC	75%	25%
CLEC	20%	80%

In Ohio, CLECs have grown from 15% market share in 2005 to 18% in 2007. This is trending with the national average of CLECs serving 18% of all access lines across the United States.

Chart 4 – Growth of CLEC Market Share in Ohio

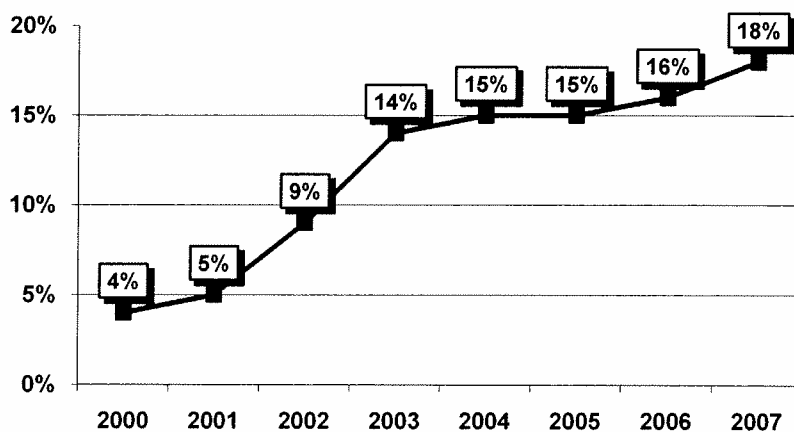


Table 4 – End-user Access Lines in Ohio

Year	ILEC Lines	CLEC Lines	Total	CLEC Share
Dec 2005	5,519,782	981,363	6,501,145	15%
Jun 2007	4,973,233	1,068,758	6,041,991	18%

Ohio CLEC Stats

Over 1 million CLEC customers.

CLECs in 97% of all Ohio zip codes.

18% market share.

20% of CLEC lines are provisioned by cable television companies.

CLEC market share continues to grow, increasing by 20% in the last two years.

ILECs have lost 23% of lines to CLECs and other competitors.

Ohio CLEC market share is trending with national averages.

24 CLECs, including Time Warner and Comcast.

The average CLEC is 80% business customers and 20% residential customers – an inverse of the typical ILEC.

There is no requirement to provide universal service. CLECs can cherry-pick the high-dollar customers and bypass the rest of a community.

Wireless Competition

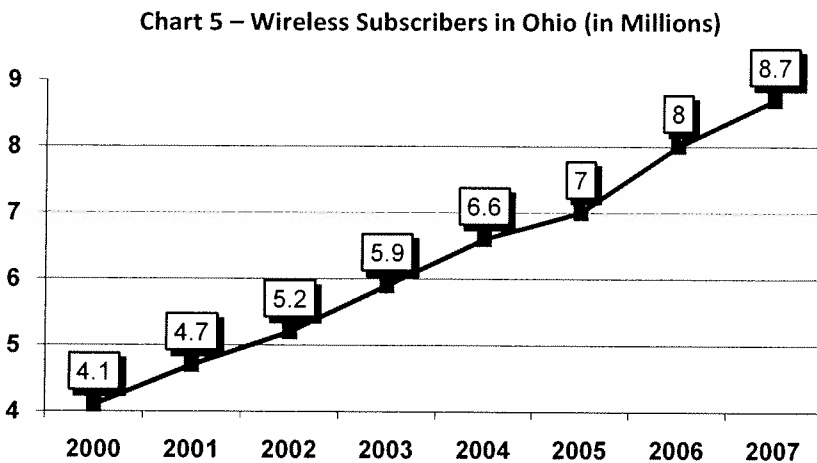
Mobile wireless (cellular) is an annual \$4.2 billion industry in Ohio – \$138 billion nationwide. There are an estimated 8.7 million wireless users in Ohio and more than 250 million users across the United States with 22 million new subscribers added in 2007 alone.

Wireless is bigger than landline – both in Ohio and the U.S. – in terms of number of users, minutes-of-use, customer spending and total company revenues. Nationally, there were over 2 trillion minutes of use on the wireless network in 2007, up 18% from 2006.

Wireless data services are also driving up cellular revenues. According to CTIA (the leading national cellular telephone association), revenues from data services were up 53% over 2006, coming in at \$23 billion for 2007. Over 1.5 billion text messages are sent every day in the U.S.

The number of wireless subscribers is growing as well. According to the FCC, the addition of 28.8 million subscribers nationally in 2006 was the largest absolute yearly increase in the number of subscribers ever.

Currently, 76% of *all* Ohio residents have a wireless phone compared to 84% nationwide.



Further evidence of the competitive impact of wireless services:

- According to the latest FCC report on wireless, one in four adults aged 18-24 years lived in households with only wireless telephones, and nearly 30 percent of adults aged 25-29 years lived in wireless-only households.

Ohio Wireless Stats

8.7 million users.

20% increase in subscribers over the past two years.

\$4.2 billion in annual revenues.

Average \$69 monthly consumer expenditure.

Average 883 minutes per month per user.

There are now 3.7 million more wireless subscribers than landline.

6 billion minutes per month in Ohio.

76% of all Ohio residents have a wireless phone.

- Wireless replacement of landlines is increasing rapidly. An estimated 18% of homes no longer have landline service and are wireless only – a three-fold increase since 2004.
- Wireless data is also a growth business, with revenues up 53% since last year. There are now 1.5 billion text messages sent daily in the United States.
- Nationwide, minutes of use have increased 40% over the past two years, totaling 2.1 trillion minutes in 2007. Much of the increase is attributed to a more extensive wireless network. There are now approximately 213,000 cell towers nationwide – 29,000 new towers have been built since 2005.

18% of homes are wireless only, a three-fold increase since 2004.

Chart 6 – Minutes of Use (in trillions)

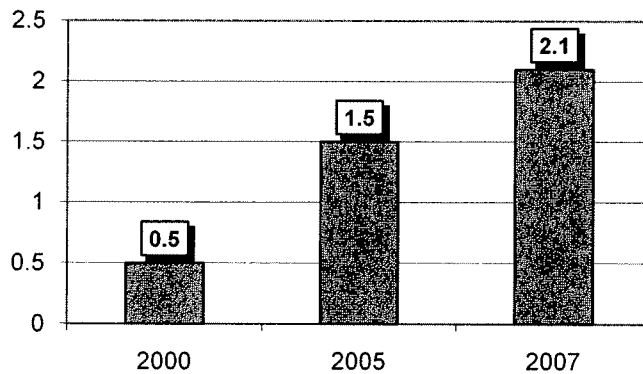
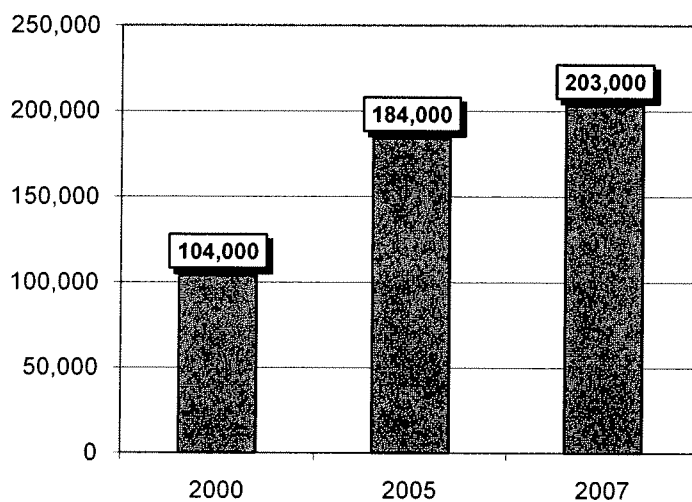


Chart 7 – Cell Towers



213,000 towers nationwide as of June 2008

VoIP Competition

Another classification of telephone service is Voice Over Internet Protocol (VoIP). Until 2004, Vonage had the lion's share of residential VoIP customers, but in 2005, the market lead was overtaken by cable TV companies. There are now 15.7 million cable telephone customers in the U.S.

In 2006, the world's largest VoIP provider, Skype, with over 100 million subscribers worldwide, was acquired by eBay. That was also the year Microsoft and Apple and Internet giants Google, Yahoo and AOL entered the VoIP market. VoIP has quickly become one of the most competitive sectors of telecom.

VoIP gives customers with a broadband connection unlimited local and long distance calling by converting voice into data packets and sending them over the data network. VoIP does not utilize the traditional public switched network on the outbound call, but it has *connectivity* with the PSTN to make and receive calls to and from any telephone number.

Although many policy-makers have attempted to define VoIP as a telecommunications service, subject to state and federal regulation, VoIP providers have been successful at positioning it as an information service – no different than accessing a web site. As a result, VoIP has the capabilities of traditional telecom – phone calls, long distance, calling features – without the corresponding regulatory requirements.

According to the Yankee Group, VoIP adoption grew more than 125% in 2006, reaching more than 9 million subscribers.

Table 5 – Summary of Telecom Regulatory Requirements

	VoIP	ILEC
Telecom Taxes	Exempt	Applies
Universal Service Fund Support	None	Available
Local Loop Facilities	None	Regulated
Quality of Service	Market Driven	Regulated
Disconnection for non-payment	At will	Regulated
Billing rules	None	Regulated
State Jurisdiction	None	Regulated
Federal Jurisdiction	None	Regulated
Equal access to LD carriers	None	Regulated
911 Access	Required	Required
Tariff	None	Required
Social Programs	None	Required
Support of TDD, etc. programs	None	Required

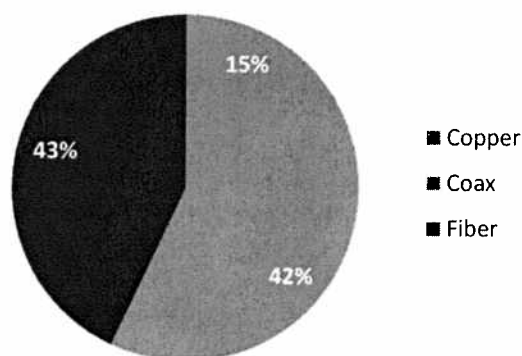
Unlike ILECs, VoIP providers are not subject to most FCC or PUCO regulations.

Subscription Video Competition

The lines between phone companies and cable television companies are blurring. Nationally, the growth of telephone subscribers served by cable television companies increased 59% in 2007. According to the National Cable Television Association, as of December 2007, there were an estimated 15.1 million cable *telephone* customers.

More than 70% of the phone companies in Ohio now offer subscription video service, several of the small telcos as owners of the cable television companies in their communities. Some of the larger telcos are now sales agents for DirecTV and Dish Network, having struck bundling deals with the satellite industry.

Chart 8 – Telco Video Delivery



Despite their entry in the market, telcos newly offering video have not had the same success at acquiring video market share as the cable companies have had acquiring telephone market share.

Table 6 – Video Competition

Provider	2005	2007
Cable	69%	68%
Satellite	28%	29%
Telcos / Other	3%	3%

There are 21 cable television companies in Ohio, compared to 42 telcos. The country's four largest – Comcast, Time Warner, Cox and Charter – are all present in Ohio. There are only two Direct Broadcast Satellite (DBS) providers, DirecTV and Dish Network, accounting for almost 30% of the video market share.

Ohio Video Stats

\$2.4 billion in annual revenues.

85% of homes are video subscribers.

3.8 million residential customers.

Cable has 68% of video market share.

Satellite has 29% of video market share.

Telcos and others have 3% video market share.

Average \$54 monthly consumer expenditure.

10% increase in customer spending over the past two years.

Increasing revenue with premium packages, digital video recording, video on demand, and HDTV.

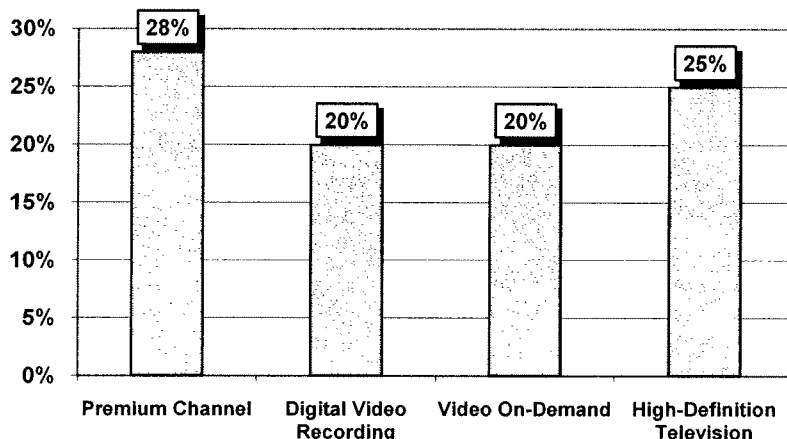
16.5 million cable telephone customers nationwide.

35% increase in cable telephone customers over the past two years.

Video Revenues

Subscription video is a growth industry. New content and digital services are driving up average revenue per user (ARPU). Digital video recording, video on-demand and high-definition television can add an additional \$25 per month to the consumer's video bill.

Chart 9 – Homes Subscribing to the Service, Where Available



Franchising Changes

On June 25, 2007, Governor Ted Strickland signed Senate Bill 117, which created the one-stop, statewide video-service authorization (VSA) process. Previously, companies had to negotiate local franchises with each municipality or township.

The law authorizes the Director of the Department of Commerce to administer the program and investigate allegations of violations or failures to comply with the law. To date, 32 telecommunications companies have applied for and received approval to provide video services in Ohio.

Statewide VSA is expected to accelerate infrastructure investment to deliver more video and broadband services to Ohioans. For example, AT&T has announced plans for a \$500 million investment in video deployment.

Barriers to Video Competition

Discriminatory pricing and availability of video programming and content to small providers is a competitive impediment to video market entry. New entrant video providers find that nearly 100% of their operating revenues are spent on video content fees and that content rates increase an average of 15% per year.

30% of all U. S. households have at least one HDTV.

32 companies have received video service authorization and are now approved to compete as video providers in Ohio.

One of the greatest barriers to effective video competition is content pricing.

Small ILECs do not have the leverage of a large customer base and end up paying much higher rates for content than incumbent cable companies.

Broadband Competition

Internet access is becoming as common as the telephone. High-speed connections can now be found in 54% of households, compared to 33% just two years ago, resulting in 2.4 million residential broadband customers. There are an additional 1.5 million business customers.

According to the FCC, 95% of Ohio homes have access to high-speed Internet service. Cable companies have a competitive advantage over telcos in residential broadband market-share.

Chart 10 – High-speed Market Share by Technology in Ohio

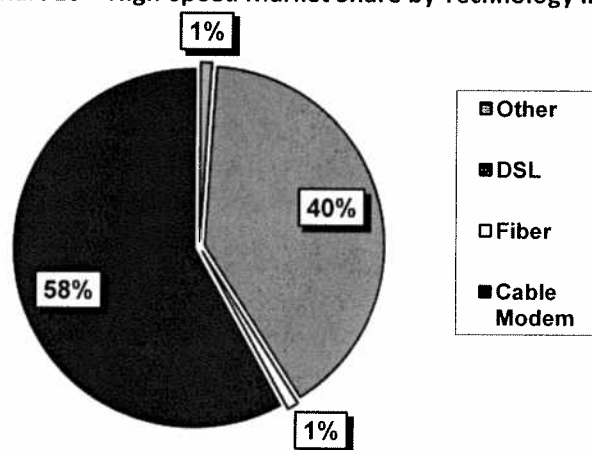


Table 7 – High-speed Residential Counts in Ohio

DSL	967,992
Fiber to the Home	15,876
Cable Modem	1,405,888
Other	13,537
TOTAL	2,403,293

The "other" category is satellite, fixed terrestrial wireless, broadband through power lines, wireless high speed Internet, and other non-DSL landline broadband services.

In Ohio, the total number of broadband customers (residential and business) has increased by three million over the past four years.

Table 8 – Growth of High Speed Lines in Ohio (includes business)

2003	2004	2005	2006	2007
977,886	1,347,040	1,889,878	3,186,537	3,956,535

Ohio Internet and Broadband Stats

An estimated \$2.5 billion annual industry.

Broadband already in 54% of Ohio homes.

95% of homes can receive broadband.

86 broadband providers in Ohio.

3.9 million high-speed customers.

Cable providers have 58% of broadband market-share.

DSL has 40% of broadband market-share.

Less than 1% of customers are served by Fiber-to-the-Home.

Alternative technologies, such as fixed wireless, have <1% of broadband market-share.

3 million new customers in the past four years, a four-fold increase.

\$38 monthly consumer expenditure; \$75 business expenditure.

Sources

Data was collected from the websites and various research reports of the following organizations:

- CTIA (formerly the Cellular Telecommunications Industry Association)
- Cronin Communications (a national telecom research and consulting firm)
- Federal Communications Commission
- National Cable and Telecommunications Association
- National Exchange Carriers Association
- National Rural Telecommunications Cooperative
- Ohio Telecom Association
- Public Utilities Commission of Ohio
- Wall Street Journal
- Yankee Group

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via first class mail, postage prepaid, on the parties listed below on this 1st day of July, 2008.

/s/Jon F. Kelly

Jon F. Kelly

Staff of the Public Utilities Commission of Ohio

William L. Wright
Assistant Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 9th Floor
Columbus, Ohio 43215-3793

Ohio Consumers' Counsel

Terry Etter
Office of the Ohio Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, Ohio 43215-3485

Appalachian People's Action Coalition

Michael R. Smalz
Ohio State Legal Service Association
555 Buttles Avenue
Columbus, Ohio 43215

Edgemont Neighborhood Coalition

Ellis Jacobs
Advocates for Basic Legal Equality, Inc.
333 W. First St., Suite 500-B
Dayton, Ohio 45402

City of Cleveland

Robert Triozzi
City of Cleveland
Law Department
601 Lakeside Ave., Room 106
Cleveland, Ohio 44114-1077

City of Toledo

Kerry Bruce
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604

City of Perrysburg

Peter Gwyn
Attorney at Law
300 Sycamore Ln
Perrysburg, Ohio 43551-1638

City of Maumee

Sheilah McAdams
Marsh & McAdams
204 W. Wayne St.
Maumee, Ohio 43537

City of Northwood

Brian Ballenger
Ballenger & Moore
3401 Woodville Rd., Suite C
Toledo, Ohio 43619

City of Oregon

Paul S. Goldberg
City Of Oregon
5330 Seaman Rd.
Oregon, OH 43616

City of Sylvania

James Moan
Lydy & Moan
4930 Holland-Sylvania Rd.
Sylvania, Ohio 43560-2149

Lucas County

Lance Keiffer
Assistant Prosecuting Attorney
711 Adams St., 2nd floor
Toledo, Ohio 43624-1680

Village of Holland

Paul A. Skaff
Leatherman, Witzler, Dombey & Hart
353 Elm Street
Perrysburg, Ohio 43551

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Summary: Memorandum Contra OCC's June 13, 2008 Motion electronically filed by Jon F Kelly on behalf of AT&T Ohio