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December 6, 2010

Via Hand Delivery

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

RE: In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162,  
PUCO Case No. 10-1010-TP-ORD

Dear Ms. Jenkins:

Enclosed are an original and ten (10) copies of the Ohio Telecom Association's Memorandum Contra Application for Rehearing, to be filed in connection with the above-referenced matter.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Very truly yours,



Carolyn S. Flahive

Enclosure

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician \_\_\_\_\_ Date Processed **DEC 06 2010**

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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Adoption of Rules                    )  
to Implement Substitute Senate Bill 162                )     Case No. 10-1010-TP-ORD

**THE OHIO TELECOM ASSOCIATION**  
**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF**  
**MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS**

THE OHIO TELECOM ASSOCIATION, for and on behalf of its members ("OTA"), pursuant to Ohio Admin.Code 4901-1-35, hereby responds to the Application for Rehearing ("OPTC Application") filed November 26, 2010 by members of Ohioans Protecting Telephone Consumers ("OPTC"). The OPTC Application raises no new issues and should therefore be denied in its entirety. The OTA supports and urges the Commission to grant the Application for Rehearing filed by the AT&T Entities ("AT&T").

The OPTC Application simply rehashes arguments already considered and rejected by the Commission. None of the fourteen assignments of error raises legitimate or lawful grounds for rehearing. Moreover, OPTC's assertions and suggested modifications to the rules are inconsistent with the state policy of considering the regulatory treatment of competing and functionally equivalent services and, to the extent practicable, providing for equivalent regulation of all telephone companies and services.<sup>1</sup>

1. The provision of additional notices to the OCC is unwarranted.

OPTC argues in its first three assignments of error that it is entitled to the same notices that the Commission receives. OPTC has overstepped here – the OCC is not entitled to receive

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<sup>1</sup> Rev. Code §4927.02(A)(8).

all of the notices required to be submitted or filed with the Commission. The OCC conflates its right to represent residential utility customers with its right to receive any and all notices.

Moreover, the additional notification requirements proposed by OCC exceed the scope of the Commission's statutory authority. One of the purposes of Sub. S.B. 162 was to provide regulatory relief, not to create additional requirements and burdens that do not apply to non-regulated service providers. OPTC's proposed modifications to the rules requiring additional notices be provided to the OCC would add unnecessary costs and should therefore be denied as inconsistent with legislative intent.

2. The exceptions to the BLES minimum standards are reasonable, lawful, and consistent with the minimum telephone service standards.

OPTC's arguments in regard to the exceptions set forth in Rule 12(C)(2) and (6) are flawed. Rev. Code §4927.08(C) explicitly provides for a waiver of the standards for the provision of BLES in circumstances determined appropriate by the Commission. The continuation of the exceptions historically allowed under the minimum telephone service standards ("MTSS") is a legitimate exercise of the Commission's statutory authority. OPTC's assignment of error should be rejected.

3. The Commission's definition of "postmark" is reasonable and lawful.

OPTC remains mired in another place and time when it comes to arguing what a postmark is and is not in today's world. Historically, postmarks were designations officially affixed to envelopes. Today, the reality is that many mailings no longer carry such postmarks. Absent a statutory definition for "postmark," the Commission is within its authority to continue to rely on the postmark definition previously adopted in the MTSS. As AT&T so aptly stated in

its Reply Comments, “The OPTC suggestion is a solution in search of a problem and should be rejected.”<sup>2</sup>

4. The Commission’s decision to allow certain information to be addressed in a telecommunications filing form rather than required by rule is reasonable and lawful.

The Commission did not err when deciding that certain informational requirements suggested by OPTC are “more appropriately addressed in the telecommunications filing form, rather than the rule.”<sup>3</sup> The Commission is within its statutory authority to determine the process by which it shall gather the information necessary in a certification or ETC designation case. OPTC’s arguments to the contrary are without merit and should be rejected.

5. A determination of inadequate service can only be made upon notice and a hearing.

The Commission reasonably and lawfully concluded that “a determination of inadequate service can only be made upon notice and a hearing.”<sup>4</sup> Rev. Code §4927.21, which affords every telecommunications service provider due process for any alleged violations of rules or law, fully supports the Commission’s rejection of OPTC’s position that a violation of state law constitutes inadequate service per se. OPTC’s assignment of error should be rejected.

6. Service outage credits are reasonably and lawfully limited to BLES customers.

OPTC’s arguments that the service credits provided for in Rule 12 should not be limited to BLES customers simply defy logic. Rule 12 specifically addresses service requirements for BLES. It is illogical to suggest that any applicable service credits would not similarly be limited

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<sup>2</sup> AT&T Reply Comments at 8.

<sup>3</sup> Opinion and Order at 13.

<sup>4</sup> Id. at 17.

to BLES customers. Moreover, OPTC's modifications would be contrary to legislative intent, and should therefore not be adopted.

7. The Commission is without authority to require telephone companies to provide a toll-free number for customers to request a printed directory.

OPTC argues that telephone companies providing BLES should be required to have a toll-free number by which BLES customers would be able to request a printed telephone directory.<sup>5</sup> Such a requirement would exceed the Commission's statutory authority and should, therefore, be rejected.

8. The Commission's rules for determining the lifeline surcharge are reasonable and lawful.

The process established by the Commission for determining lifeline surcharges is lawfully set forth in Rule 19(P). The two-step approach is consistent with Revised Code §4927.13(D) and OPTC's assertions to the contrary should be rejected.

9. The Commission's definition of "affected persons" and its process for determining to whom notice should be provided under the Provider of Last Resort rule are both reasonable and lawful.

The Commission has reasonably and lawfully defined "affected persons" for purposes of Rule 27, which pertains to responsibilities of a Provider of Last Resort (POLR). Rev. Code §4927.11(C) requires the Commission to define "affected persons" for purposes of waiver notice under this rule. The Commission has met its statutory requirements.

OPTC's contention that OCC should receive notice is another attempt to require that nearly all notices submitted to the Commission should be provided to OCC as well. Moreover, OPTC fails to provide any support for its purported representation of local governments and its

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<sup>5</sup> OPTC Application for Rehearing at 18.

assertion that such local governments are affected by POLR waiver requests. OPTC's assignment of error should be denied.

10. The required showing for a POLR waiver meets the statutory requirement.

The Commission's standard in Rule 27 (G)(1)(g) that a carrier seeking a waiver from its POLR obligation must include in its application "a clear explanation of how customers would otherwise have access to BLES or alternative service offerings that are just and reasonable" clearly meets the statutory requirements. Rev. Code §4927.11(C) requires such an application to include the alternatives that would be available to impacted persons or entities if the waiver were granted. The statute does not require an explanation of how customers would otherwise have access to alternative service offerings that are reasonable substitutes for BLES. Rule 27(G) actually goes beyond the description of the alternatives set forth in the statute by requiring that the alternative service offerings be just and reasonable. The OPTC's assignment of error has no merit.

11. The OPTC has raised no new issues with respect to the submission of annual assessment reports by wireless carriers.

The OTA agrees with the Commission's determination that the current practice of allowing wireless carriers to submit rather than file their assessments reports "represents the status quo, and nothing in the law precludes the Commission from continuing this practice for wireless service providers, since their assessment report is used solely for purposes of calculating the PUCO and OCC assessment."<sup>6</sup> In any case, because the OCC receives a copy of all such assessment reports, it is not prejudiced in any way by the submission, rather than the filing, of

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<sup>6</sup> Opinion and Order at 39.

such reports with the Commission. OPTC's assignment of error raises no new issues, is without merit, and should be denied.

CONCLUSION

For the foregoing reasons, the Commission should deny the OPTC Application for Rehearing in its entirety and should grant the OTA and AT&T Applications for Rehearing.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served upon all parties listed below by electronic mail and via U.S. mail, postage pre-paid, this 6th day of December 2010.

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