

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Verizon North Inc. for Approval of an	)	
Alternative Form of Regulation of	)	
Basic Local Exchange Service and	)	Case No. 08-989-TP-BLS
Other Tier 1 Services Pursuant to	)	
Chapter 4901:1-4, Ohio Administrative	)	
Code.	)	

Affidavit

Of

**Kathy L. Hagans**

On behalf of

The Office of the Ohio Consumers' Counsel

**October 17, 2008**

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Attachment KLH-1: Verizon Discovery Responses to OCC

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Verizon North Inc. for Approval of an )  
Alternative Form of Regulation of Basic ) Case No. 08-989-TP-BLS  
Local Exchange Service and Other Tier 1 )  
Services Pursuant to Chapter 4901:1-4, )  
Ohio Administrative Code. )

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**AFFIDAVIT OF KATHY L. HAGANS**

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**I. INTRODUCTION**

1. My name is Kathy Hagans. I am employed by the Office of the Ohio Consumers' Counsel ("OCC") as a Principal Regulatory Analyst. During my tenure at OCC, my responsibilities have ranged from research and analysis in cases involving gas, electric, water and telecommunications companies to policy analysis and implementation.
2. I am providing this affidavit in response to the Application of Verizon North Inc. for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code ("Application") filed on August 29, 2008 by Verizon North Inc. ("Verizon" or "Company"). For the reasons set forth in this affidavit, Verizon's Application should be denied for 22 of the 24 exchanges for which it is requesting alternative regulation.

3. I reserve the right to supplement my affidavit at a later date in response to any additional information filed by Verizon or any pleadings filed by Verizon in this proceeding.

## **II. BACKGROUND**

4. House Bill 218 ("HB 218") authorized the Public Utilities Commission of Ohio ("PUCO" or "Commission") to allow alternative regulation of basic local exchange service ("BLES") provided by incumbent local exchange telephone companies ("ILECs"). The Commission subsequently established rules, set forth in Chapter 4901:1-4, Ohio Administrative Code, in Case No. 05-1305-TP-ORD ("BLES alt. reg. rules" or "rules").<sup>1</sup> The rules became effective on July 17, 2006. On August 29, 2008, Verizon filed its first application for approval of alternative regulation for BLES and other Tier 1 services in 24 exchanges, using Test 4 in each exchange.<sup>2</sup>

## **III. COMPETITIVE MARKET TEST 4**

5. In order to satisfy Test 4 in a given telephone exchange area, an ILEC must demonstrate:

at least fifteen per cent of total residential access lines have been lost since 2002 as reflected in the applicant's annual report filed with the commission in 2003, reflecting data for 2002; and the

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<sup>1</sup> *In the Matter of the Application of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, Case No. 05-1305-TP-ORD ("05-1305"), Entry on Rehearing (May 3, 2006).

<sup>2</sup> Thus, this Affidavit is focused only on Test 4.

presence of at least five unaffiliated facilities-based alternative providers serving the residential market.<sup>3</sup>

Test 4 is comprised of two distinct “prongs,” each of which must be satisfied in order for BLES alt. reg. to be granted in a given exchange. I address the “alternative providers” prong here.

**A) TEST 4, PRONG 2: “The presence of at least five unaffiliated facilities-based alternative providers serving the residential market.”**

**1. The requirements of the Test.**

6. The second prong of Test 4 allows ILECs an opportunity to seek to establish that residential BLES is “subject to competition” or has “reasonably available alternatives,” as required by R.C. 4927.03(A)(1), by demonstrating “the presence of at least five unaffiliated facilities-based alternative providers serving the residential market.”<sup>4</sup> The Commission must carefully review the language it adopted in Test 4 and in the “Definitions” section of the BLES alternative regulation rules,<sup>5</sup> and interpret that language in accordance with the relevant factors enumerated at R.C. 4927.03(A)(2).

**a. Defining “unaffiliated facilities-based alternative provider.”**

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<sup>3</sup> 4901:1-4-10(C)(4), O.A.C. A CLEC is a “competitive local exchange carrier.”

<sup>4</sup> *Id.*

<sup>5</sup> 4901:1-4-01, O.A.C.

7. To begin, the Commission must consider what it means to be a “facilities-based alternative provider.” The Commission defined both “alternative provider” and “facilities-based alternative provider” in the BLES alt. reg. rules:

“Alternative provider” means a provider of competing service(s) to the basic local exchange service offering(s), regardless of the technology and facilities used in the delivery of the services (wireline, wireless, cable, broadband, etc.).<sup>6</sup>

“Facilities-based alternative provider” means a provider of competing service(s) to the basic local exchange service offering(s) using facilities that it owns, operates, manages or controls to provide such services, regardless of the technology and facilities used in the delivery of the services (wireline, wireless, cable, broadband, etc.).<sup>7</sup>

As is evident from the definitions, the only distinction between these two types of carriers is that a facilities-based alternative provider “us[es] facilities that it owns, operates, manages or controls to provide such services.”

8. The second prong of Test 4 also requires these facilities-based alternative providers to be unaffiliated with the ILEC seeking BLES alternative regulation.

The term “affiliate” was defined by the Commission in the BLES alt. reg. rules:

“Affiliate” means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with another person. For purposes of these rules, the term “own” means to own an equity interest (or the equivalent thereof) of more than ten per cent.<sup>8</sup>

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<sup>6</sup> 4901:1-4-01(B), O.A.C.

<sup>7</sup> 4901:1-4-01(G), O.A.C.

<sup>8</sup> 4901:1-4-01(A), O.A.C.

9. Thus, an “unaffiliated facilities-based alternative provider” would be any facilities-based alternative provider that the ILEC seeking BLES alternative regulation does not directly or indirectly own or control, is not owned or controlled by, or is not under common ownership or control with the ILEC seeking BLES alternative regulation.

**b. Identifying “alternative providers.”**

10. Verizon has not identified any providers affiliated with Verizon in applying Test 4, so that aspect of identifying alternative providers for the purpose of the second prong of Test 4 is not an issue here. In addition, in its 05-1305 Opinion and Order, the Commission determined that:

[W]ith technology advancements, alternative providers such as wireline CLECs, wireless, VoIP and cable telephony providers are *relevant to our consideration* in determining whether an ILEC is subject to competition or customers have reasonably available alternatives to the ILECs' BLES offering at competitive rates, terms and conditions.<sup>9</sup>

By making this statement, the Commission did not automatically confer “alternative provider” status on any non-ILEC; rather, the Commission determined that it would *consider* “alternative providers such as wireline CLECs, wireless, VoIP and cable telephony providers” when determining whether the statutory requirements for granting BLES alt. reg. have been met. Alternative providers that are “relevant to [the Commission’s] consideration” must satisfy three conditions, according to the language in the Test and in the aforementioned

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<sup>9</sup> 05-1305 Opinion and Order at 25 (emphasis added). “VoIP” refers to Voice over Internet Protocol.



definition. *First*, the provider must be “a provider of competing service(s) to the basic local exchange service offering(s)” of the ILEC in question, per 4901:1-4-01(B), O.A.C. *Second*, the provider must have a “presence” in the market, per 4901:1-4-10(C)(4), O.A.C. *Third*, the provider must be “serving the residential market,” per 4901:1-4-10(C)(4), O.A.C.

**2. Eleven of the thirteen wireline<sup>10</sup> alternative providers identified by Verizon do not qualify as a “facilities-based alternative provider serving the residential market” in compliance with the statutory requirements of R.C. 4927.03(A) and the BLES alt. reg. rules.**

11. In its Application, Verizon identifies thirteen wireline carriers as unaffiliated facilities-based providers serving the residential market in various of the 24 exchanges.<sup>11</sup> Those carriers include: Armstrong Cable; AT&T; Buckeye Cable; Cincinnati Bell; dPi Teleconnect; First Communications; Heritage Telephone Company (“Heritage”); Insight; Level 3 Communications (“Level 3”); Ohio Telecom; Suddenlink; TDS Telecom; and Time Warner Cable.<sup>12</sup> The Company, however, has failed to provide sufficient evidence or data to support its claim that all of the wireline carriers identified as alternative providers serve residential customers and are facilities-based in the exchanges for which Verizon has requested BLES alt. reg. The BLES alt. reg. rules require that “**An applicant**

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<sup>10</sup> The subject of this affidavit is wireline carriers. See the affidavit of Karen J. Hardie for an analysis of wireless carriers.

<sup>11</sup> Application, Exhibit 3B.

<sup>12</sup> *Id.*

must demonstrate...the presence of at least five unaffiliated facilities-based alternative provider serving the residential market.”<sup>13</sup> When the appropriate information is examined, it is evident that at least eleven of these wireline carriers do not meet the standard for satisfying Test 4.

**a. Verizon's lack of supporting documentation**

12. Verizon's Application is deficient and does not provide sufficient evidence to support its claim that all thirteen wireline carriers identified as facilities-based alternative providers serving residential customers in the exchanges for which Verizon seeks BLES alt. reg. are in fact facilities-based or are actually serving residential customers in those exchanges. Verizon's Application includes no evidence that any wireline carrier in any exchange has residential white page listings, which the Commission has found to demonstrate service to residential customers.<sup>14</sup> In fact, in response to OCC discovery requesting the total number of residential white page listings for each identified alternative provider, Verizon stated “it did not rely upon white page listings for alternative providers to demonstrate the presence of unaffiliated facilities-based alternative providers in its service areas.”<sup>15</sup> Verizon's application also includes little evidence, in any

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<sup>13</sup> 4901:1-4-10(C)(4), O.A.C. (emphasis added).

<sup>14</sup> See, e.g., *In the Matter of the Application of AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier I Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Opinion and Order (December 20, 2006) (“06-1013 Order”) at 32.

<sup>15</sup> Verizon response to OCC Interrogatory No. 196.

exchange, of any wireline carrier that has ported residential numbers, which the Commission has also found to demonstrate service to residential customers.<sup>16</sup> In fact, Verizon's Exhibit 3D to its Application contains data showing only three of the thirteen wireline carriers have ported residential numbers in the exchanges in which they are identified as alternative providers serving residential customers.<sup>17</sup> In addition, Verizon provides no information or data indicating that any specific wireline carrier is facilities-based, as is required in order to meet Test 4.

Additional documentation included by Verizon for the wireline carriers identified in the various exchanges includes only printouts of website pages from the various companies and its Exhibit 3C, entitled Local Exchange Routing Guide (LERG) NPA/NXX Assignments. Verizon indicates only that the LERG information "indicates the NPA-NXX assignments in the exchanges for which Verizon requests BLES alternative regulation."<sup>18</sup> The information from the LERG provides no demonstration whatsoever of the presence of "unaffiliated facilities-based alternative providers serving the residential market."<sup>19</sup>

13. Thus, Verizon has provided very little information to demonstrate service by the alternative providers it identified to residential customers on a facilities-based

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<sup>16</sup> See, e.g., 06-1013 Order at 32.

<sup>17</sup> Although Verizon's Exhibit 3D to its Application does not indicate that the numbers ported by exchange on this exhibit are residential, in response to OCC's Interrogatory No. 197 regarding ported numbers the Company responded, "The providers shown on the exhibit were listed if they had one or more residential numbers ported in the exchange."

<sup>18</sup> Application at 4.

<sup>19</sup> 4901:1-4-10(C)(4), O.A.C.

basis in the exchanges included in the Application. The requirements of the second prong of Test 4 clearly state “**an applicant** must demonstrate ... the presence of at least five unaffiliated facilities-based alternative providers serving the residential market.”<sup>20</sup> Verizon has the burden to make the showing required by Test 4.

**b. Armstrong Cable**

14. Verizon has identified Armstrong Cable as a provider serving residential customers in the Ashland, Chesapeake, and Medina exchanges. Although a review of the Cable Franchise Area map<sup>21</sup> indicates Armstrong Cable appears to serve in these three exchanges, Verizon has provided no evidence of either white page listings or ported numbers.<sup>22</sup> Therefore, Verizon has not met its burden of demonstrating that Armstrong Cable is an alternative provider serving the residential market in the Ashland, Chesapeake and Medina exchanges.

**c. AT&T**

15. Verizon identifies “AT&T” (presumably the CLEC affiliate of the ILEC AT&T Ohio) as a facilities-based provider serving residential customers in the Cambridge, Chesapeake, Jackson, Montrose, and Norwalk exchanges. However, a review of the CLEC AT&T’s local exchange service tariff indicates that AT&T,

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<sup>20</sup> 4901:1-4-10(C)(4), O.A.C. (emphasis added).

<sup>21</sup> Ohio Cable Television Franchise Areas; Data Mapping, Inc.; Printed June, 2006.

<sup>22</sup> Application Exhibit 3D does not contain data showing ported numbers to Armstrong Cable in any of the three exchanges.

the CLEC, serves business customers only.<sup>23</sup> Verizon's Exhibit 3D lists "AT&T" as a provider to which numbers have been ported in the Cambridge, Jackson, Montrose and Norwalk exchanges. This data does not demonstrate that the CLEC AT&T provides residential service in these five exchanges. Verizon claims as alternative providers in the exchanges both AT&T Wireless and AT&T as a wireline provider. Because Exhibit 3D does not distinguish between these two carriers, it is impossible to definitively determine that the ported number information refers to AT&T the wireline CLEC. In fact, Exhibit 3D does not contain any data showing any ported numbers to either the CLEC AT&T or to AT&T Wireless in the Chesapeake exchange. The fact that the CLEC AT&T's tariffs refer only to business service leads to a conclusion that the ported numbers included in Exhibit 3D for the Cambridge, Jackson, Montrose and Norwalk exchanges are for AT&T Wireless, not AT&T wireline service to residential customers. In addition, as stated earlier, Verizon provided no information to demonstrate whether the CLEC AT&T uses its own facilities in the five exchanges and has provided no evidence of white page listings as an indication of service to residential customers.

16. The tariff of the CLEC AT&T clearly does not include services available to residential customers; there is no evidence of the CLEC AT&T being facilities-based or serving residential customers in the exchanges indicated by Verizon and

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<sup>23</sup> AT&T Communications of Ohio, Inc.; P.U.C.O. No. 3; Local Exchange Service; Section 15E.PL, 24<sup>th</sup> Revised Sheet No. 1, effective December 28, 2007.

the ported numbers data cannot be relied upon. Therefore, the CLEC AT&T should be excluded as a facilities-based provider of service to residential customers in the five exchanges in which it is identified.

**d. Buckeye Cable**

17. Verizon has identified Buckeye Cable as a facilities-based provider of residential services in the Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania exchanges. A review of the Cable Franchise Area map indicates Buckeye Cable does not provide service in the Ashland, Bowling Green, Norwalk, or Port Clinton exchanges.<sup>24</sup> Verizon's Exhibit 3D contains no data showing ported numbers to Buckeye Cable in any of the five exchanges and Verizon has provided no data indicating any residential white page listings for Buckeye Cable. Therefore, Buckeye Cable should be excluded as an alternative provider in the Ashland, Bowling Green, Norwalk, and Port Clinton exchanges because the Cable Franchise Area map shows Buckeye Cable does not serve in those exchanges and because Verizon has not provided data showing white page listings or numbers ported to Buckeye Cable in any of these exchanges. The Sylvania exchange should also be excluded for the purpose of satisfying the requirements of Test 4 because Verizon has not provided data showing white page listings or numbers ported to Buckeye Cable in this exchange.

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<sup>24</sup> Ohio Cable Television Franchise Areas; Data Mapping, Inc.; Printed June, 2006.

**e. Cincinnati Bell**

18. Verizon has identified Cincinnati Bell (the CLEC affiliate of Cincinnati Bell, Inc.) as an alternative provider serving residential customers in the Trotwood exchange. Verizon has provided no information or data showing Cincinnati Bell has any residential white page listings or ported numbers in the Trotwood exchange.<sup>25</sup> Without such a demonstration, Verizon has not shown that Cincinnati Bell provides service to residential customers and therefore Cincinnati Bell does not meet the requirements of Test 4 in the Trotwood exchange.

**f. dPi Teleconnect**

19. Verizon identifies dPi Teleconnect in the Englewood and Portsmouth exchanges as a facilities-based alternative provider serving residential customers. Verizon provided no evidence of dPi Teleconnect being facilities-based in these two exchanges or serving residential customers through a showing of white page listings or ported numbers.<sup>26</sup> dPi Teleconnect's tariff on file with the Commission is only applicable to SBC (now AT&T Ohio) exchanges.<sup>27</sup> In addition, dPi Teleconnect's 2007 Annual Report to the PUCO indicates only AT&T Ohio as a company with whom dPi Teleconnect has an interconnection agreement.<sup>28</sup> dPi

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<sup>25</sup> Application Exhibit 3D does not contain data showing ported numbers to Cincinnati Bell in the Trotwood exchange.

<sup>26</sup> Application Exhibit 3D does not contain data showing ported numbers to dPi Teleconnect in the Englewood and Portsmouth exchanges.

<sup>27</sup> dPi Teleconnect, L.L.C.; P.U.C.O. Tariff No. 1, Original Page No. 33-67; effective October 15, 2003.

<sup>28</sup> Annual Report of dPi Teleconnect, LLC to the Public Utilities Commission of Ohio for the Year Ended December 31, 2007; page 2.

Teleconnect does not meet the requirements necessary to be considered as an alternative provider for purposes of Test 4 in the Englewood and Portsmouth exchanges.

**g. First Communications**

20. Verizon identifies First Communications as a facilities-based provider serving residential customers in the Montrose exchange. In addition to Verizon providing no information regarding white page listings and whether First Communications is a facilities-based alternative provider, Verizon's Exhibit 3D does not show any numbers ported to First Communications in the Montrose exchange. Therefore, Verizon has not demonstrated that First Communications is a facilities-based provider of service to residential customers in accordance with the requirements of Test 4.

**h. Heritage Telephone Company**

21. Verizon identifies Heritage as an alternative provider serving residential customers in the Marion exchange. A review of Heritage's tariff on file with the Commission, however, indicates Heritage does not provide service in the Marion exchange.<sup>29</sup> Verizon's Exhibit 3D does not include information showing ported numbers to Heritage in the Marion exchange. Verizon also provided no information indicating white page listings in the Marion exchange for Heritage. Therefore, Verizon has not demonstrated that Heritage is a provider serving

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<sup>29</sup> Heritage Telephone Company, PUCO Tariff No. 1; First Revised Pages 6-7, effective March 20, 2008.



residential customers in the Marion exchange and it does not meet the requirements of Test 4 in that exchange.

**i. Level 3**

22. Verizon has identified Level 3 in 23 of the 24 exchanges as an unaffiliated facilities-based alternative provider serving the residential market. Level 3 is a known provider of business or wholesale services, not residential local services. With respect to Level 3, the Commission found in 07-760 “the record reflects, as supported by Level 3’s tariff and website statements, that Level 3 is a provider of business and wholesale services.”<sup>30</sup> Level 3 does not provide retail services to residential consumers. Moreover, Level 3’s PUCO Local Tariff No. 1 has been cancelled in its entirety.<sup>31</sup>
23. In 07-760, although the Commission found that Level 3 is a provider of business and wholesale services as opposed to residential services, it found that “the record demonstrates that Level 3’s information in various Embarq databases represents the existence of residential customers of a retail VoIP-based provider(s) that utilizes Level 3 as a wholesale provider of ‘VoIP Enhanced local service’ to obtain and/or port residential phone numbers from Embarq, White Pages listings in Embarq’s directory and listings in Embarq’s E9-1-1 database.”<sup>32</sup> Verizon,

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<sup>30</sup> *In the Matter of the Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-760-TP-BLS, Opinion and Order (December 19, 2007) (“07-760 Order”) at 26.

<sup>31</sup> Level 3 Communications, LLC, P.U.C.O. Tariff No. 1, First Revised Sheet 1, effective July 1, 2008.

<sup>32</sup> 07-760 Order at 26.

however, has submitted no data in this case identifying any VoIP provider utilizing Level 3 to serve residential basic local exchange customers in any of the 23 exchanges in which Verizon identifies Level 3 as an alternative provider. In fact, in response to an OCC data request asking Verizon to identify each VoIP provider assumed to be providing service to residential customers and to state how the Company verified that each VoIP provider was providing service to residential customers, the Company responded "Verizon does not know the identity of the underlying VoIP provider(s) to which Level 3 ports residential numbers."<sup>33</sup>

24. In 07-760, the Commission relied on statements contained on Level 3's website to find that VoIP customers using Level 3's wholesale service owned their own switches. This statement however, is made for a wholesale, voice service called VoIP Enhanced Local.<sup>34</sup> **Level 3 also provides a wholesale, voice service called Switched One Plus which is available to non-facilities-based resellers.**<sup>35</sup> Thus, the question of whether the VoIP provider is actually facilities-based cannot be answered without information such as the identity of the VoIP provider, which Verizon has not provided.
25. Verizon also provides no information in its Application indicating that Level 3 has white page listings in any of its exchanges. In addition, the Company has

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<sup>33</sup> Verizon response to OCC Interrogatory No. 111.

<sup>34</sup> <http://www.level3.com/index.cfm?pageID=111> (accessed October 8, 2008).

<sup>35</sup> <http://www.level3.com/index.cfm?pageID=105> (accessed October 8, 2008).

provided no information or data in this case that identifies any VoIP provider supposedly providing local service to residential customers.

26. Verizon has not provided the information necessary in order to include Level 3, or any unnamed VoIP provider utilizing Level 3, as a facilities-based alternative provider that serves residential consumers in any of the 23 Verizon exchanges. Level 3 does not serve residential customers and there is no information to demonstrate that any VoIP provider that might be using Level 3's wholesale, voice service is actually facilities-based. As stated previously, the requirements of the second prong of Test 4 clearly state "**an applicant** must demonstrate ... the presence of at least five unaffiliated facilities-based alternative providers serving the residential market."<sup>36</sup> Verizon has the burden to make the showing required by Test 4 and has not done so.

**j. Suddenlink**

27. Verizon identifies Suddenlink as an alternative provider serving residential customers in the Cambridge exchange. Verizon provides no information in its Application showing white page listings or ported numbers in order to demonstrate Suddenlink serves residential customers in the Cambridge exchange.<sup>37</sup> Thus, Verizon has not met the requirements of Test 4 in naming

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<sup>36</sup> 4901:1-4-10(C)(4), O.A.C. (emphasis added).

<sup>37</sup> Application Exhibit 3D does not contain data showing ported numbers to Suddenlink in the Cambridge exchange.

Suddenlink as a provider serving residential customers, and Suddenlink should be rejected as an alternative provider under Test 4 in the Cambridge exchange.

**k. TDS Telecom**

28. Verizon has identified TDS Telecom in the Jackson exchange as a facilities-based provider serving residential customers. Verizon cites to Certificate No. 90-9187-CT-TRF. That docket, however, includes a letter dated June 24, 2005 from Renee Jenkins to "TDS Metrocom LLC" cancelling its certificate as of June 26, 2005. In addition, Verizon has included no information in its Application showing TDS Telecom is facilities-based or that it provides service to residential customers in the Jackson exchange through data showing white page listings or ported numbers.<sup>38</sup> Thus, TDS Telecom does not meet the requirements of Test 4 and should be rejected as an alternative provider for Test 4 purposes in the Jackson exchange.

**l. Time Warner Cable**

29. Verizon has identified Time Warner Cable as a provider serving residential customers in all exchanges except the Chesapeake exchange. A review of the Cable Franchise Area map<sup>39</sup> indicates that Time Warner Cable does not serve the Brunswick, Cambridge, Jackson, Port Clinton, or Sylvania exchanges. In addition, Verizon has not demonstrated in any of the exchanges in which Time

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<sup>38</sup> Application Exhibit 3D does not contain data showing ported numbers to TDS Telecom in the Jackson exchange.

<sup>39</sup> Ohio Cable Television Franchise Areas; Data Mapping, Inc.; Printed June, 2006.

Warner Cable is identified that it actually has residential customers through white page listings or ported numbers.<sup>40</sup> Verizon has not met the requirements of Test 4 regarding Time Warner Cable because it has not provided data showing service to residential customers.

**B) Summary Conclusion for Second Prong of Test 4 for Wireline Providers**

30. For the second prong of Test 4, I have established a necessary set of conditions for determining whether candidate facilities-based carriers qualify as “alternative providers” in accordance with the R.C. 4927.03(A), the definitions set forth in 4901:1-4-01, O.A.C., and the language of the Tests themselves appearing in 4901:1-4-10(C), O.A.C.
31. For the reasons stated above, Armstrong Cable, AT&T, Buckeye Cable, Cincinnati Bell, dPi Teleconnect, First Communications, Heritage, Level 3, Suddenlink, TDS Telecom, and Time Warner Cable do not satisfy the conditions required to qualify as an “alternative provider” for the purpose of satisfying prong two of Test 4 in many exchanges. Based on Ms. Hardie’s and my conclusions and analyses, Table 1 illustrates that Verizon has failed to satisfy its burden with regard to qualifying facilities-based alternative providers in 22 of the 24 Test 4 exchanges. Its Application for BLES alt. reg. in those 22 exchanges must therefore be denied.

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<sup>40</sup> Application Exhibit 3D does not contain data showing ported numbers to Time Warner Cable in any of the 23 exchanges in which it is identified as an alternative provider.

**Table 1**

Exchange	Total Providers Claimed (1)	Excludable Providers	Total Providers After Exclusion
Ashland	7	Armstrong Cable, Buckeye Cable, Level 3, T-Mobile Wireless, Time Warner Cable	2
Athens	6	Level 3, OPEX, Time Warner Cable	3
Bowling Green	7	Buckeye Cable, Level 3, Revol Wireless, Time Warner Cable	3
Brunswick	6	Level 3, Time Warner Cable	4
Cambridge	7	AT&T, Level 3, Suddenlink, T-Mobile Wireless, Time Warner Cable	2
Chesapeake	5	Armstrong Cable, AT&T, TracFone Wireless	2
Circleville	6	Boost Mobile Wireless, Level 3, Time Warner Cable	3
Delaware	7	Level 3, Revol Wireless, Time Warner Cable	4
Englewood	9	Cricket Wireless, dPi Teleconnect, Jump Mobile Wireless, Level 3, T-Mobile Wireless, Time Warner Cable	3
Jackson	6	AT&T, Level 3, TDS Telecom, Time Warner Cable	2
Marion	6	Heritage, Level 3, Time Warner Cable	3
Medina	7	Armstrong Cable, Level 3, Time Warner Cable	4
Montrose	7	AT&T, First Communications, Level 3, Time Warner Cable	3
New Philadelphia	6	Boost Mobile Wireless, Level 3, Time Warner Cable	3
Plain City	7	Cincinnati Bell Wireless, Level 3, Revol Wireless, Time Warner Cable	3
Port Clinton	8	Buckeye Cable, Level 3, Revol Wireless, T-Mobile Wireless, Time Warner Cable	3
Portsmouth	6	dPi Teleconnect, Level 3, nTelos Wireless, Time Warner Cable	2
Sylvania	7	Buckeye Cable, Level 3, Time Warner Cable	4
Trotwood	9	Cincinnati Bell, Cincinnati Bell Wireless, Cleveland Unlimited Wireless, Cricket Wireless, Level 3, Time Warner Cable	3
Troy	8	Cricket Wireless, Level 3, Revol Wireless, Time Warner Cable	4
Wadsworth	6	Level 3, Time Warner Cable	4
Wilmington	7	Cleveland Unlimited Wireless, Cricket Wireless, Level 3, Time Warner Cable	3

(1) Application Exhibit 3B.

#### IV. CONCLUSION

32. When assessing whether the ILEC has satisfied one of the 4901:1-4-10(C) competitive market tests for a given exchange, the Commission must interpret those tests, and the definitions of the language appearing in the rules, in accordance with R.C. 4927.03(A).
33. As established in my affidavit, Verizon has failed to implement Test 4 in accordance with the statute. Verizon has identified carriers that do not qualify as “facilities-based alternative providers serving the residential market” because they (a) have not been shown to be facilities-based providers; and/or (b) have not been shown to serve the residential market in the exchanges identified.
34. The fact that Verizon has failed to meet the statutory requirements through compliance with the competitive market tests set forth at 4901:1-4-10(C), O.A.C. is a reflection on the fact that it is not easy to meet the standards for obtaining BLES alt. reg., nor should it be easy. Verizon has included eleven carriers as alternative providers that do not provide local residential service, are not necessarily facilities-based and/or do not serve in the exchanges indicated by Verizon and therefore do not meet the requirements of the BLES alt. reg. rules. Therefore, granting Verizon’s Application in the *absence* of competition is certainly not in the public interest as required by R.C. 4927.03(A). As discussed in my affidavit, Verizon’s Application should be denied in 22 of the 24 requested exchanges and the Commission should not allow Verizon to charge residential consumers higher rates for basic service and Caller ID service in those exchanges.

I reserve the right to supplement my affidavit at a later date due to any additional information that might be provided by Verizon.



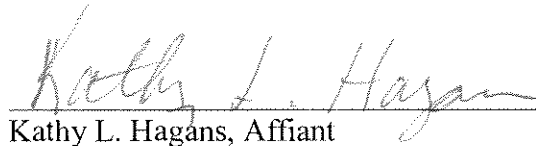
STATE OF OHIO

COUNTY OF FRANKLIN

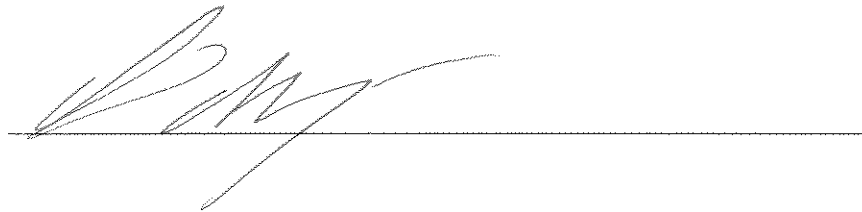
The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and stated the following:

I have caused to be prepared the attached written affidavit in support of the Office of the Ohio Consumers' Counsel in the above referenced docket. This affidavit is true and correct to the best of my knowledge, information, and belief.

Further Affiant sayeth not.

  
Kathy L. Hagans, Affiant

Subscribed and sworn to before me this 17th day of October 2008.



DAVID C. EDMUNDS, ATTORNEY AT LAW  
Notary Public, State of Ohio  
Commission Expires 10/31/2010

**VERIZON'S RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'  
COUNSEL INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS – FIRST SET  
CASE NO. 08-0989-TP-BLS  
(DATED SEPTEMBER 12, 2008 – RESPONSE SEPTEMBER 22, 2008)**

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111. For each exchange in which Level 3 was identified as an alternative provider:
- a. What is the identity of the VoIP provider assumed to be providing service to residential customers?
  - b. How did the Company verify that the VoIP provider assumed to be providing residential service was, in fact, providing service to residential customers?

**RESPONSE:**

- a. Verizon does not know the identity of the underlying VoIP provider(s) to which Level 3 ports residential numbers.
- b. See a. At least one or more of the ported numbers were for former Verizon residential customers.

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196. By exchange, what is the total number of residential white pages listings for each alternative provider identified in each exchange for which Verizon is seeking BLES exemption in the Application?

**RESPONSE:**

In addition to its General Objections, Verizon objects to Request No. 196 on the grounds that the question is neither relevant to the proceeding nor likely to lead to the discovery of admissible evidence. Verizon also objects because the information requested is not readily available. Further, without waiving its objections, Verizon states that it did not rely upon white page listings for alternative providers to demonstrate the presence of unaffiliated facilities-based alternative providers in its service areas.

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197. By exchange, what is the total number of residential ported telephone numbers associated with each alternative provider identified in each exchange for which Verizon is seeking BLES exemption in the Application?

**RESPONSE:**

In addition to its General Objections, Verizon objects to Request No. 197 because the question is neither relevant to the proceeding nor likely to lead to the discovery of admissible evidence. Without waiving these objections, Verizon states the following: See Exhibit 3D to Verizon's Application. The providers shown on the exhibit were listed if they had one or more residential numbers ported in the exchange. The precise number of telephone numbers ported is irrelevant.