**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s )
Investigation into Intrastate Carrier ) Case No. 10-2387-TP-COI
Access Reform Pursuant to Sub. )
S.B. 162. )

**INITIAL COMMENTS OF T-MOBILE CENTRAL, LLC
AND VOICESTREAM PITTSBURGH, LP**

T-Mobile Central LLC and VoiceStream Pittsburgh, LP (“T-Mobile”) hereby submits these comments in response to the Public Utilities Commission of Ohio (“PUCO’s”) Entry dated November 3, 2010 (“PUCO Order”) requesting comments from interested parties on the PUCO Staff’s proposed Access Restructuring Plan. As explained in more detail below, T-Mobile supports the PUCO’s Staff proposal to require local exchange carriers to reduce intrastate switched access rates to mirror interstate rates, but believes it is unnecessary and harmful to Ohio consumers for the state to create a state fund to further subsidize carriers that could recover any revenues lost through access reform from their customers and the myriad services offered over their network.

1. **INTRODUCTION**

In today’s telecommunications market, the lines between local and long distance are blurred as customers are using wireless, wireline, voice over Internet protocol (“VoIP”), texting, emailing, blogging, Internet social networking sites, and other methods to communicate with each other. As the telecommunications industry moves forward in technology and scope, it makes little sense to continue to apply antiquated compensation regimes developed long ago to the “all-forms” and “all-distance” communications available today to Ohio consumers.

T-Mobile, a commercial mobile radio service (“CMRS”) provider offering advanced wireless products and services, fiercely competes among numerous intermodal competitors within the state of Ohio. Incumbent local exchange carriers (“ILECs”), competitive local exchange carriers (“CLECs”), VoIP providers of all forms, and other wireless carriers all compete for the same customers. In addition to voice service, carriers are now offering multiple types of services on their integrated network including broadband data and even video in some cases, which significantly increases the revenue they receive from their customers. The presence of this significant intermodal competition will continue to ensure that basic local exchange service functionality is available at affordable rates, which renders a state access fund or state universal fund obsolete and unnecessary. To this end, T-Mobile commends the PUCO Staff for undertaking the politically difficult task of reducing intrastate switched access rates but does not believe it is necessary to create a state access fund, which will create an unnecessary surcharge on consumers’ telephone bills. Before even considering creation of a state fund, the PUCO should closely examine market conditions, the rates that rural local exchange carriers (“RLECs”) charge for basic local exchange service and the revenue they currently receive from other services they offer using the same network (e.g., broadband and video). The PUCO should also recognize that it is not alone in its consideration of these issues. In early 2010, the National Regulatory Research Institute (“NRRI”) released its paper on the development of state high cost funds, which provides a comprehensive review of the various issues that need to be considered by state utility commissions in determining whether a state universal service fund is needed.[[1]](#footnote-1)

1. **WHILE REDUCTIONS IN LEC SWITCHED ACCESS RATES ARE PROCOMPETITIVE AND GOOD FOR OHIO CONSUMERS, THE CREATION OF A STATE FUND ONLY TRANSFERS SUBSIDIES FROM ONE FORM TO ANOTHER WHICH IS HARMFUL FOR CONSUMERS AND CARRIERS ALIKE**

T-Mobile supports the PUCO Staff’s proposal to reduce all switched access charges of all local exchange carriers (“LECs”) operating in Ohio. As an initial step, the PUCO should require that all intrastate switched access charges be reduced or maintained consistent with interstate rates. Moving intrastate access rates to mirror interstate access rates in Ohio is a good first step to comprehensive reform. Ultimately, however, T-Mobile believes that “bill and keep” arrangements are the best solution for fixing intercarrier compensation consistent with the goals of the National Broadband Plan. Once this step is reached, each carrier would recover from its own customers the costs of traffic that originates from, or terminates to, those customers. Until this goal is reached, the problems presented by parties who attempt to “game” traffic flows will remain, and regulators will be forced to devote resources to addressing these problems rather than working to further the interests of Ohio customers.

T-Mobile’s recommendation includes an initial assumption that the PUCO can reduce intrastate switched access rates in a revenue neutral manner without creation of the Staff’s proposed access fund. First, T-Mobile urges the PUCO to establish a statewide benchmark rate for all basic local exchange service and require all qualifying RLECs to price their services at that statewide benchmark before granting access to a state fund. Second, the PUCO should examine all potential revenue streams available from an RLEC’s common plant (including revenue streams from unregulated products or services offered on the same network) to determine whether the company has sufficient revenue to recover from any reductions in switched access rates. If an RLEC does not recover sufficient revenues through these two steps, only then should the PUCO permit a company to access a state fund. In other words, the PUCO should rely upon existing tools available (e.g., price flexibility) to those impacted entities in lieu of establishing a state fund, which is ultimately borne by Ohio consumers.

1. **The PUCO can implement switched access reform in a revenue neutral manner without creating a state access fund.**

Under Section 4927.15, Revised Code, the PUCO has authority to order changes in a telephone company’s rates for carrier access, but any reduction shall be on a revenue neutral basis under terms and conditions established by the Commission. The only reasonable interpretation of the term “revenue neutral” is that the PUCO is assured that a carrier is capable of replacing the lost revenue from some other source, not that the carrier is guaranteed a dollar-for-dollar replacement of revenues. The relevant inquiry for the Commission, therefore, is whether RLECs can replace reduced access revenues from other sources. As discussed below, the answer is that Ohio RLECs certainly can.

When RLECs were the only provider of local exchange service and interexchange carriers (“IXCs”) were the only providers of interLATA toll service, RLECs regulated by rate of return regulation were required to submit financial information that indicated the regulated price of basic exchange service was insufficient to cover the RLECs cost of providing service. As a result, regulators permitted RLECs to collect the remaining revenue from high switched access rates which were well above the cost of providing switched access functionality. In other words, high access rates were set to subsidize basic local exchange service to ensure that customers in rural areas were able to receive (below-cost) local rates. In Ohio, regulators approved these rates when carriers had few, if any, other sources of revenue.

In today’s telecommunications market, a company such as CenturyTel will now be a wholly-owned subsidiary of the soon-to-be third largest ILEC by the third quarter of 2011. Other RLECs operating in Ohio are also now offering a wide variety of custom calling features, long distance service, high speed internet and sometimes video entertainment all over the same network it offers basic local exchange service.

The PUCO should assess whether there is truly a need for the establishment of a fund before creating another government-mandated subsidy program. This calls for close review of a company’s financial data for all services it offers using joint and common facilities before considering more subsidies to that company. It is essential for the PUCO to consider that RLECs today offer a combination of services that are driving higher average revenue per user (ARPU). In today’s market, most RLECs are capable of recovering the full costs of providing those services from their own end user customers. Indeed, the NRRI Report acknowledges the propriety of recognizing such revenues in determining the need for high-cost support.[[2]](#footnote-2) The existence of “unregulated Internet or video revenue using common network assets” is one of the factors listed in the NRRI Report as reducing the need for a state universal fund.[[3]](#footnote-3)

In addition to looking at all revenues generated by facilities receiving support, the PUCO should also establish an appropriate statewide benchmark rate. By adopting a statewide benchmark, the Commission can set an affordable rate for local services while making sure one company’s customers do not unnecessarily subsidize the operations of another company. Further, recipient providers should be required to raise basic local exchange rates up to the established statewide benchmark rate (or be treated as doing so for support purposes) because competitors should not be required to pay a higher surcharge when a recipient provider refuses to charge the benchmark for competitive reasons. If the State does not impose this requirement, the RLECs could choose not to increase rates, and effectively prevent the development of competition in their markets through subsidies funded by potential competitors. Subsidizing the RLECs’ local rates keeps those rates artificially low, which makes it difficult for competitors to enter the market and compete when competitors’ rates are not subsidized. This policy is anticompetitive and harmful to consumers in that RLEC territory because they are unable to experience the benefits of competition. Furthermore, forcing other companies to pay for below-benchmark rates by RLECs increases the other companies’ costs, thereby forcing those companies to pass the costs onto their customers and to delay investment in their network. In establishing a statewide benchmark, the PUCO should examine the changes in the costs to provide basic local exchange service in today’s market, consider nationwide average prices for comparable service, and examine the effects of price changes on consumer subscription rates.

1. **Creating an Ohio universal service subsidy to offset access reductions does not nothing more than transfer the overcharges from access rates to Ohio USF contributions**

Just like the subsidies embedded in intrastate switched access rates, the explicit subsidies in a state fund should not be created until a necessity for these subsidies is proven. From a policy perspective, a failure to recognize the revenue opportunity from other sources of revenue and succumbing to an RLEC ultimatum that the RLEC must either be permitted to continue receiving inflated access revenue or shift recovery of access revenue reductions to an Ohio universal service fund merely perpetuates the incentive for RLECs to extract an easily available income stream from their competitors rather than focus efforts on increasing end user adoption of the other services they offer. The PUCO should avoid such a policy.

As recently as November 29, 2010 the Washington Utilities and Transportation Commission (“UTC”) released a report regarding policies associated with switched access reform and whether the state should create a state universal fund.[[4]](#footnote-4) After conducting three workshops and receiving written comments from interested parties, the Commission issued a report concerning universal service policies at the request of certain members of the Washington Legislature. In that report, the UTC recognized the ILECs claims of decreased revenues due to other competitive options, but also stated that “[i]f we were to lower, or even eliminate intercarrier compensation rates, it would become necessary to require carriers to recover more of their ongoing investment and operating costs from their own end users, a condition that is clearly necessary in an increasingly competitive market.”[[5]](#footnote-5) Transferring subsidies from access rates to a state universal service does not address the evolution in the market; rather, it increases marketplace distortions whereby one technology provider is required to assist another technology provider offering wireline services.

Before considering creation of a state universal fund, the PUCO should implement a process for determining the impacted entities’ individual revenues and costs and whether they are able to recover revenues previously received from access charges through their end users (e.g., price flexibility). As noted by the UTC,

“[u]ntil this objective is accomplished, the [UTC] is reluctant to recommend a state universal service fund. Moreover, recognizing that telecommunications consumers already face a myriad of fees, taxes, and surcharges on their monthly bills, we would not endorse yet another potential line item that is difficult to explain or even justify to consumers.”[[6]](#footnote-6)

1. **T-MOBILE’S RESPONSES TO THE PUCO’S PROPOSED QUESTIONS**
2. **The Staff’s proposed plan for the restructuring of ILEC access rates addresses the impact of access rate reduction only and does not address the impact of access line loss on the rural ILECs’ provider-of-last resort obligation. Should the impact of access line loss on revenue be addressed as part of the access restructuring plan? What are the advantages and disadvantages of such an addition to the restructuring plan?**

As discussed above, before considering creation of a state universal service fund, the PUCO should consider the RLECs’ rates for local exchange service and whether they are priced at or above a benchmark rate and also the other revenues that the RLEC receives to support its operations. Similar to the UTC, the PUCO should cautiously move forward before creating a state fund and look at the full financial picture of each individual RLEC. If any particular RLEC is losing access lines to competitors, it is certainly harmful for the state to prop-up a company that consumers are not choosing for their services or to require other service providers and their customers to subsidize companies when there are competitive alternatives. To that end, it is harmful for the Ohio market and consumers alike to continue subsidizing companies in a competitive market.[[7]](#footnote-7)

A state access fund is unnecessary because affordable basic service is available throughout Ohio in part as a result of the rise of intermodal competition throughout the state, including rural areas. As an initial matter, any claims that an RLEC’s ability to offer quality service at just and reasonable rates may be affected are just that – unsubstantiated claims. There is no evidence before the PUCO or available to competing carriers to support these claims. As a matter of policy, every carrier should look primarily to its own customers to recover its costs rather than relying on either implicit or explicit subsidies funded by other carriers. This will result in less market distortion in the local service market, as well as in the other markets such as wireless and long distance service. Indeed, the desire to minimize distortion in other markets is one of the prime justifications for the reduction of state access rates in the first place.

In addition, there should not be an assumption that a reduction in revenues from intrastate access services must necessarily be recovered through the imposition of a state access fund, which would ultimately be borne by consumers. Telecommunications providers in Ohio, as elsewhere in the country, have many sources of revenue available to them because of the relationship that that they have with their customers. Carriers today are able to provide many services in addition to local voice services – long distance, broadband internet access, calling features, and video services, to name a few. In most of these cases, the revenue opportunity exists because of shared network that is used jointly to provide telecommunications and other services. These revenue opportunities were not generally available when the PUCO first set intrastate switched access rates. Before setting up a market-distorting universal service fund, the PUCO should first examine *all* revenue sources available to the RLECs, and determine whether collection of revenue from those other sources may render a state fund unnecessary. If the RLECs are guaranteed a revenue stream through a government-mandated subsidy program like the one proposed by the PUCO Staff, they will have less incentive either to operate more efficiently or to find the additional sources of revenue that will allow them to cover their costs. A better incentive would be to forego a fund and allow the RLECs either to provide services that customers want to buy from them or to operate more efficiently like most other sectors of the industry.

1. **Although the Staff’s proposal plan does not require interconnected voice over internet protocol (VoIP) service providers to contribute to the restructuring fund, it requires provider of telecommunications services to a provider of interconnected VoIP-enabled services to pay the mandatory monthly contribution related to those VoIP services. As VoIP traffic volumes terminating on the eligible ILECs’ networks increases, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILECs’ networks?**

As discussed in more detail above, T-Mobile does not believe a state access fund is necessary. If the PUCO proceeds forward in creating such a fund, which will result in another surcharge on customers’ bills, it should only be applied to those carriers that intend on seeking disbursements from the fund.

1. **The Staff’s proposed plan includes a provision for recalculating the size of the restructuring mechanism for each eligible ILEC every two years after the initial restructuring mechanism becomes operational. Is this a reasonable timeframe? If not, how often should the recalculation of the fund occur? Should the fund recalculations for price-cap eligible ILECs and nonprice-cap eligible ILECs be performed at different intervals?**

The Staff has proposed the recalculating of the size of the fund every two years without any rationale of why it could not be done on an annual basis. If the PUCO does proceed with creating a state fund with the purpose of providing revenues to the RLECs for reducing access rates based on access lines, it should be done on annual basis because that is most representative of the market for each provider. There are few, if any, administrative difficulties in implementing the recalculation on an annual basis; such an annual recalculation would be more representative of current market conditions. Additionally, the Staff proposal includes a provision to provide disbursements based on billed switched access minutes as of December 2009 without any explanation as to why the data is not based on a more current date of December 2010. To ensure the state fund accurately represents the market conditions when it is implemented, T-Mobile urges the PUCO to base the disbursements on a date closer to the time it is implemented --- namely, December 2010. Indeed, pursuant to Appendix D, contributing carriers are required to provide total access lines as of December 31, 2010 --- the same calculations should apply to those seeking disbursements from a state fund.

Furthermore, all ILECs should be treated the same so the recalculation should be applied equally between price-cap ILECs and non-price cap eligible ILECs. If the PUCO proceeds with a fund, it should explain its rationale for treating carriers differently and why it is beneficial for consumers to implement discriminatory procedures for obtaining access to a state universal fund.

1. **The Staff’s proposed plan includes different methodologies for recalculating the size of the access restructuring mechanism for price-cap eligible ILECs than the methodology proposed for nonprice-cap eligible ILECs. Is this a reasonable approach?**

See T-Mobile’s response to Question 3 above.

1. **The Staff proposes a third-party administrator to oversee the access restructuring fund. How should this third-party administrator be selected? What criteria for selecting a third-party administrator should be included in the selection process? Are there alternatives to a third-party administrator that the Commission should consider?**

In regards to the benefits or drawbacks of using a third-party administrator, T-Mobile’s primary concern is to make the administration of a state fund as efficient as possible because Ohio consumers are the ones that will ultimately pay for the costs to maintain such a fund.

1. **The Staff proposes that the projected administration costs be included in the fund size calculation. How should a reasonable initial administration cost amount be estimated? How should it be calculated on an ongoing basis?**

See T-Mobile’s response to Question 5.

1. **The Staff proposal includes a provision to allow the Commission to revisit the access restructuring mechanism if the Federal Communications Commission (FCC) takes specific actions. Is this a reasonable approach?**

T-Mobile strongly urges the PUCO to consider the actions of the FCC as it implements intercarrier compensation and universal service reforms. Given the broad aspirations of the National Broadband Plan and the potential benefits that could reach within the boundaries of Ohio, T-Mobile urges the PUCO to hold-off implementation of a state fund. Instead, the PUCO should take an active role in the implementation of federal reforms to ensure that Ohio consumers receive the maximum benefits available for broadband deployment.

1. **In what ways, if any, can the Staff proposal be modified to address various contingencies including, but not limited to, carriers entering or exiting the Ohio market and mergers between and acquisitions of carriers doing business in Ohio?**

If the PUCO proceeds with creating a state fund, any recipient companies that merge with other companies should be subject to additional scrutiny as to whether there is a continuing need to receive further subsidies. T-Mobile urges the PUCO to undertake a detailed examination concerning the true financial condition of each ILEC wanting to receive subsidies. When the PUCO analyzes the financial condition of ILECs, it should look at the entire picture of the ILEC at the parent level rather than looking at individual, wholly-owned operating entities.

1. **If a carrier believes that it is not a contributing carrier, how shall such a carrier inform the Commission of its belief? How should the Commission deal with such carriers?**

The State should exempt wireless carriers and its customers from contributing to a state fund, as not exempting them would require wireless customers to subsidize inappropriately the operations of a few rural local exchange companies, would not promote competition and could stifle the growth of the wireless industry in the State. If the State proceeds with creating a state fund, it is essential that the state assess a need based on requesting carriers’ current financials and to only require those that take out of the fund to pay into it. Burdening new and innovative services and technologies, especially those that pay little if any intrastate switched access, with the obligation to finance the RLECs legacy business operations is plainly not in the public interest. Doing so would only retard the progress these technologies and providers have made in advancing and maintaining universal service.

1. **CONCLUSION**

For the reasons stated above, T-Mobile commends the PUCO for undertaking the politically difficult task of implementing much needed intrastate switched access reform. However, through this process, the PUCO should take caution in assuming the need to create a state fund. As noted above, the PUCO can meet the “revenue neutrality” requirement by ensuring that LECs are given the opportunity to recover lost revenues from other sources --- it does not mean a guaranteed right to seek reimbursements from a state fund. To that end, T-Mobile urges the PUCO to implement a state-wide benchmark rate for basic local exchange service and to analyze the financial abilities of impacted entities to determine whether they can recover revenue from other sources on their network.

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 Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I certify that a copy of the foregoing document was served via electronic mail upon the following persons this 20th day of December, 2010:

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1. *See* Bluhm, Bernt, and Liu, “State High Cost Funds: Purposes, Design, and Evaluation”, National Regulatory Research Institute, January 19, 2010 (“NRRI Report”); available at: www.nrri.org/pubs/telecommunications/NRRI\_state\_high\_cost\_funds\_jan10-04.pdf. [↑](#footnote-ref-1)
2. *See* NRRI Report at pages 48-49. [↑](#footnote-ref-2)
3. *Id.* at page 72. [↑](#footnote-ref-3)
4. *See generally* Report Reviewing State Telecommunications Policies on Universal Service, prepared by Washington Utilities and Transportation Commission, dated November 29, 2010 (“UTC USF Report”). [↑](#footnote-ref-4)
5. *See* UTC USF Report at page 23. [↑](#footnote-ref-5)
6. *Id.* at page 24. [↑](#footnote-ref-6)
7. The RLECs have not provided any cost data on what, if any, burdens are associated with carrier-of-last-resort obligations. Until carriers provide such data and prove that they are unable to perform any obligations as a LEC, then the PUCO should not consider this when reducing switched access rates or the need of creating a state fund. [↑](#footnote-ref-7)