

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Ohio)
Bell Telephone Company dba AT&T Ohio)
for Approval of an Alternative Form of)
Regulation of Basic Local Exchange Service) Case No. 08-107-TP-BLS
and Other Tier 1 Services Pursuant to)
Chapter 4901:1-4, Ohio Administrative Code.)

OPINION AND ORDER

The Commission, coming now to consider the submitted application and other evidence and arguments presented in this proceeding, hereby issues its opinion and order.

I. BACKGROUND

On August 5, 2005, Governor Bob Taft signed into law House Bill 218 (H.B. 218). This bill, which took effect November 4, 2005, amends various provisions of the Ohio Revised Code, for the purpose of revising state telecommunications policy, including Sections 4905.04, 4927.02, 4927.03, and 4927.04, Revised Code. Among other things, Section 4927.03(A)(1), Revised Code, now authorizes the Commission to allow alternative regulation of basic local exchange service (BLES) offered by incumbent local exchange companies (ILECs) in those telephone exchanges where the Commission determines that alternative regulation is in the public interest. To qualify for alternative regulation, the ILEC must be subject to competition or customers must have reasonably available alternatives. In addition, the Commission must establish that there are no barriers to market entry. The Commission was authorized by Section 4927.03(D), Revised Code, to adopt rules to carry out the statutory intent.

On March 7, 2006, the Commission, pursuant to Case No. 05-1305-TP-ORD (05-1305), *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*, established rules for the alternative regulation of BLES. These rules were subjected to the legislative rule review process and became effective on August 7, 2006. Consistent with these rules, ILECs with an approved elective alternative regulation plan can apply for pricing flexibility of BLES and other Tier 1 services. Applications for alternative regulation of BLES and basic Caller ID will be approved provided the applicant satisfies one of the competitive market tests identified in Rule 4901-1-4-10, Ohio Administrative Code (O.A.C.), in a given exchange. Pursuant to Rule 4901:1-4-09(G), O.A.C., an ILEC's application for BLES alternative regulation will become effective on the one hundred and twenty-first day after the filing of the application unless the application is suspended by the Commission.

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Rule 4901:1-4-01(C), O.A.C., defines BLES as:

[E]nd user access to and usage of telephone company-provided services that enable a customer, over the primary line serving the customer's premises, to originate or receive voice communications within a local service area, and that consist of the following:

- (1) Local dial tone service.
- (2) Touch tone dialing service.
- (3) Access to and usage of 9-1-1 services, where such services are available.
- (4) Access to operator services and directory assistance.
- (5) Provision of a telephone directory and listing in that directory.
- (6) Per call, caller identification blocking services.
- (7) Access to telecommunications relay service.
- (8) Access to toll presubscription, interexchange or toll providers or both, and networks of other telephone companies.

BLES also means carrier access to and usage of telephone company-provided facilities that enable end user customers' origination or receiving voice grade, data or image communications, over a local exchange telephone company network operated within a local service area, to access interexchange or other networks.

Essentially, the Commission may allow alternative regulation of BLES if it finds that the ILEC is subject to competition with respect to BLES in a particular exchange or customers in that exchange have reasonably available alternatives to BLES. To do so, the Commission must determine whether the applicant passes at least one of the four competitive market tests that appear in Rule 4901:1-4-10(C), O.A.C. The rule states that "[i]f the applicant can demonstrate that at least one of the following competitive market tests is satisfied in a telephone exchange area, the applicant will be deemed to have met the statutory criteria found in division (A) of Section 4927.03 of the Revised Code for BLES and other tier one services in that telephone exchange area. These competitive market tests do not preclude an ILEC from proposing to demonstrate the statutory criteria are satisfied through an alternative competitive market test." The four market tests are as follows:

- (1) An applicant must demonstrate in each requested telephone exchange area that at least twenty-five per cent of total residential access lines are provided by unaffiliated [competitive local exchange carriers] CLECs, and at least twenty per cent of total

company access lines have been lost since 1996 as reflected in the applicant's annual report filed with the commission for 1996.

- (2) An applicant must demonstrate in each requested telephone exchange area that at least twenty per cent of total residential access lines are provided by unaffiliated CLECs, and the presence of at least two unaffiliated facilities-based CLECs providing BLES to residential customers.
- (3) An applicant must demonstrate in each requested telephone exchange area that at least fifteen per cent of total residential access lines are provided by unaffiliated CLECs, the presence of at least two unaffiliated facilities-based CLECs providing BLES to residential customers, and the presence of at least five alternative providers serving the residential market.
- (4) An applicant must demonstrate that in each requested telephone exchange area that 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 presence of at least five unaffiliated facilities-based alternative providers serving the residential market.

The Ohio Bell Telephone Company dba AT&T Ohio (AT&T) seeks alternative regulation in the following 8 exchanges: Chagrin Falls, Christiansburg, Hillcrest, Independence, Painesville, Pitchin, Urichsville, and Willoughby. Specifically, AT&T asserts that it meets the criteria set forth in competitive market Test 4 [Rule 4901:1-4-10(C)(4), O.A.C.] in each of the requested exchanges.

II. HISTORY OF THE PROCEEDINGS

On February 8, 2008, AT&T filed an application for approval of an alternative form of regulation of BLES and other Tier 1 services in the aforementioned 8 exchanges. AT&T filed its application under the provisions of Chapter 4901:1-4, O.A.C.

On February 12, 2008, the office of the Ohio Consumers' Counsel (OCC) timely filed a motion to intervene. By Entry issued February 27, 2008, the attorney examiner granted OCC's motion to intervene.

Rule 4901:1-4-09(F), O.A.C., provides that any party who can show why such an application should not be granted must file a written statement detailing the reasons within forty-five calendar days after the application is docketed. On March 24, 2008, OCC filed a

written statement opposing AT&T's application. Pursuant to the attorney examiner Entry of June 3, 2008, the application was suspended consistent with Rule 4901:1-4-09(G), O.A.C.

III. SUMMARY OF THE APPLICATION

AT&T submits its application pursuant to Section 4927.03, Revised Code, and Chapter 4901:1-4, O.A.C., for approval of an alternative form of regulation for BLES and other Tier 1 services. In the memorandum in support of its application, AT&T states that its application includes the forms, affidavits, supporting information, detailed analysis, proposed tariff revisions, and the proposed legal notice required by the rules.

Summarizing the exhibits that accompany its application, AT&T states that Exhibit 1 purports to show that it complies with its elective alternative regulation commitments. Exhibit 1 contains the affidavit of Ms. Connie Browning, President of AT&T. The affidavit complies with Rule 4901:1-4-09(B)(1), O.A.C., and verifies that the company is in full compliance with elective alternative regulation commitments.

Exhibit 2 of the application contains a matrix that identifies the exchanges and corresponding counties that are affected by the application.

In Exhibit 3, AT&T identifies the telephone exchange areas for which it seeks alternative regulation for BLES and other Tier 1 services. Moreover, the exhibit presents supporting information and detailed analysis to prove that AT&T meets at least one of the competitive market tests for each of the exchanges.

In demonstrating its compliance with the competitive market tests, AT&T discloses the publicly available sources of alternative providers' information, e.g., websites, tariff filings, information on wireless licenses, Commission certifications, and interconnection agreement filings. To confirm publicly available sources, AT&T reviewed internal billing data, E9-1-1 records, White Pages listings, and ported telephone number information.

Exhibit 4 contains AT&T's proposed tariff modifications. AT&T states that it has already restructured its tariff to implement the pricing flexibility that it sought in its first BLS case.¹ Given that AT&T has already restructured its tariff, the tariff modifications proposed in this application merely add the additional 8 exchanges to the 136 exchanges approved by the Commission in its two prior BLS cases.

Exhibit 5 contains AT&T's proposed legal notice, which notifies the public of the filing of its application. AT&T's legal notice is intended to comply with Rule 4901:1-4-09(B)(5), O.A.C. Consistent with the rule, the application states that AT&T will publish

¹ *In the Matter of the Application of AT&T Ohio for Approval of an Alternative Form of Regulation of Basic Local Exchange and Other Tier 1 Services Pursuant to Chapter 4901:1-4, O.A.C., Case No. 06-1013-TP-BLS (06-1013).*

legal notice within seven days of the filing of the application in the legal notice section of a newspaper of general circulation in each county corresponding to the exchanges for which BLES alternative regulation is being requested.

Overall, AT&T proclaims that it has complied with all aspects of the Commission's rules pertaining to an application for BLES alternative regulation. Therefore, under Section 4927.03, Revised Code, AT&T submits that the Commission must find that the granting of the company's application for BLES and other Tier 1 service flexibility in the designated exchanges is in the public interest, that AT&T's BLES is subject to competition, that the company's customers have reasonably available alternatives, and that there are no barriers to entry with respect to BLES in those exchanges. AT&T believes that it has satisfied its burden and, therefore, urges the Commission to grant its application on an automatic basis in accordance with the applicable rule.

IV. SUMMARY OF THE PARTIES' POSITIONS

A. Generic Issues Regarding BLES Alternative Regulation Rules

1. General Discussion

OCC's Position

On March 24, 2008, OCC filed a pleading opposing AT&T's application for alternative regulation of BLES. In opposing AT&T's application, OCC seeks to avert an expected 8.8 percent increase in BLES rates and an 8.3 percent increase in Caller ID rates (OCC Opposition at 2). OCC contends that the Commission's rules are flawed because they do not accurately express the intent of the public interest standard of Section 4927.03(A)(1), Revised Code, which specifically requires that alternative regulation must be in the public interest. OCC asserts that the requested alternative regulation is not in the public interest if AT&T subscribers of Tier 1 services in the eight requested exchanges do not have the alternatives to AT&T's BLES and will be forced to pay considerably more for service (*Id.* at 3, 11).

Specifically, OCC alleges that nearly all of the alleged alternative providers do not really provide competing services to AT&T's BLES and/or do not have a presence in the AT&T exchanges sufficient to discipline AT&T's prices (*Id.* at 4). OCC submits that unless consumers have real competitive alternatives at prices comparable to AT&T's basic services, the approval of the pending application cannot possibly be in the public interest (*Id.* at 7). OCC opines that the focus should be on facilities-based providers that compete with AT&T's stand-alone Tier 1 core services, and not those that include bundles of noncore and basic service. To do otherwise, according to OCC, will result in AT&T Tier 1 core service customers either paying more for their AT&T service, paying for another provider's service, or possibly doing without telephone service (*Id.* at 8-11).

AT&T's Position

AT&T notes that OCC repeats the same arguments that it asserted in 05-1305 and against AT&T's application in 06-1013, *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 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-259-TP-BLS (07-259), and *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 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-1312-TP-BLS (07-1312). AT&T urges the Commission to reject OCC's arguments as it did in these prior cases. It is AT&T's contention that OCC is yet again attempting to undo the legislation pertaining to the alternative regulation of BLES and the Commission's pertinent rules. Noting that the rules were subject to the legislative rule review process, AT&T urges the Commission to reject OCC's efforts to subvert the BLES rules (AT&T Memorandum Contra at 2-4). AT&T points out that the Ohio Supreme Court has rejected OCC's arguments regarding the validity of the Commission's competitive market tests and found the tests to be reasonable and in compliance with Section 4927.03, Revised Code, including the public interest criterion (*Id.* at 3-7 citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301 [2008]).

Commission Conclusion

The Commission recognizes that OCC raises the same arguments as it did in 05-1305, where the Commission established the rules for the alternative regulation of BLES. OCC not only challenged the rules but also challenged their implementation in five prior cases, including applications for BLES alternative regulation, filed by Cincinnati Bell Telephone Company (Cincinnati Bell), two filings by AT&T, and one such filing by Embarq.² OCC appealed the Commission's decisions in both the 06-1002 and 06-1013 proceedings to the Supreme Court of Ohio.³ On March 6, 2008, the Supreme Court of Ohio affirmed the Commission's decision in both proceedings. Specifically, regarding AT&T's 06-1013 proceeding involving Tests 3 and 4, the Supreme Court of Ohio stated:

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

² See *In the Matter of the Application of Cincinnati Bell Telephone Company, LLC 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. 06-1002-TP-BLS (06-1002); 06-1013; 07-259; *In the Matter of the Application of United telephone Company of Ohio dba 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 (07-760); and 07-1312.

³ *Ohio Consumers' Counsel v. Pub. Util. Comm.*, S.C. No. 07-0659.

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.* ¶52).

Having already fully addressed OCC's arguments concerning alleged flaws in the rules on five prior occasions, it is not necessary to revisit the same arguments again. Although the Commission will not reiterate a full review of OCC's arguments insofar as they relate to alleged flaws in the rules themselves, the Commission shall consider OCC's assertions that AT&T's application does not comply with the BLES rules or meet the criteria of the competitive market tests.

2. Functionally Equivalent or Substitute Services

OCC's Position

In this proceeding, OCC focuses its attention on the Section 4927.03(A), Revised Code, requirement that a BLES alternative regulation application must be in the public interest (OCC Opposition at 7). OCC believes that AT&T's application fails to establish the ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions in accordance with Section 4927.03(A)(2)(c), Revised Code (*Id.* at 6, 7). Specifically, OCC opines that the evidence presented in the context of AT&T's application fails to establish that the granting of the requested BLES alternative regulation is in the public interest. In support of its position, OCC submits that the services provided by the alternative providers identified by AT&T generally are not competitively priced with AT&T's Tier 1 core services due to a lack of market share and/or have service deficiencies that do not make it reasonably available for the majority of subscribers in the requested exchanges (*Id.* at 20-23). Based on these alleged deficiencies, OCC submits that the granting of AT&T's application will result in subscribers in the requested 8 exchanges having to pay considerably more for service either from AT&T or from an alternative provider. Therefore, OCC concludes that the granting of AT&T's application in the requested exchanges will not be in the public interest (OCC Opposition at 12).

Specific to wireless service, OCC posits that such services are not functionally equivalent or a substitute service for BLES (Hardie Affidavit at ¶11). OCC contends that, although a small percentage of subscribers have "cut the cord" and gone wireless, it does not follow that wireless telephony is a readily available functional equivalent to, or substitute for BLES (*Id.* at ¶13). OCC submits that, if the rates, terms, and conditions associated with the alternative providers' services differ significantly from those of stand-alone BLES, then the alternative providers should not be relied upon for the purpose of satisfying Rule 4901:1-4-10(C), O.A.C. (*Id.* at ¶¶14, 16; OCC Reply at 4).

In support of its position, OCC submits that AT&T failed to provide any documentation in its application comparing its BLES rates, terms, and conditions with those of the wireless providers identified by the applicant (Hardie Affidavit at ¶14). Therefore, OCC asserts that AT&T fails to address the critical issues of whether alternative providers offer competing services to AT&T BLES or make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions (*Id.* at ¶34). Based on its own analysis, OCC rejects the identified wireless providers (Alltel Wireless, Cincinnati Bell Wireless, Sprint/Nextel, and Verizon Wireless) as satisfying Competitive Test 4 (Rule 4901:1-4-10[C][4]) due to the fact that their services are not a functional equivalent or substitute for basic service alternative service inasmuch as their services are not available at rates, terms, and conditions that are comparable to AT&T's stand-alone BLES rate (OCC Opposition at 20, 21). Additionally, OCC argues that wireless carriers should not be counted in the exchanges in which they have no ported numbers or White Pages listings (OCC Opposition at 21, 22; Hardie Affidavit at ¶¶25-30).

OCC disputes AT&T's inclusion of companies offering service bundles, which include BLES, as an alternative to BLES. In support of its argument, OCC states that inasmuch as the Commission, in Case No. 02-3069-TP-ALT, *In the Matter of the Application of SBC Ameritech Ohio for Approval of an Alternative Form of Regulation*, previously granted AT&T's predecessor alternative regulation to bundles containing BLES, the Commission's BLES alternative regulation rules should be limited to consideration of alternative regulation for stand-alone Tier 1 core services (OCC Opposition at 8-12). OCC believes that if a competitor does not offer a service equivalent in scope to AT&T's BLES at a price that is competitive with BLES, then the granting of the application is not in the public interest inasmuch as consumers will not have a viable option to AT&T's service (OCC Reply at 4). In support of its position, OCC states that there is a wide disparity between AT&T's basic service rates and the rates charged by the identified alternative providers ranging from 42 percent to 187 percent higher than AT&T's basic service rates (*Id.*; Hagans Affidavit at ¶29).

AT&T's Position

In response to OCC's contentions regarding "functionally equivalent or substitute services," AT&T points out that the Commission has previously rejected such arguments in 05-1305, Opinion and Order, March 7, 2006, at 25; and 06-1013, Entry on Rehearing, February 14, 2007, at 14. AT&T submits that the Commission's competitive market tests and the Commission's application of such tests have been affirmed by the Ohio Supreme Court in *Ohio Consumers' Counsel v. Pub. Util. Comm.*, ¶¶ 21, 22 (AT&T Memorandum Contra at 6, 7). In support of its position, AT&T cites the court's determination that:

OCC's argument fails to recognize the legislative guidance provided by the changes to the policy section of the chapter in R.C. 4927.02. The General Assembly provided the commission with

new standards to consider when determining eligibility for alternative regulation, and those standards included the consideration of the larger environment of voice communication providers.

The commission established that bundled services provide competition to basic phone service. The commission determined that customers are switching service in the presence of competitors and that those customers find the alternative services to be adequate substitutes for AT&T's service. The court will not reverse or modify a commission decision as to questions of fact in cases in which the record contains sufficient probative evidence to show that the commission's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm.*, 1-4 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶129. OCC has demonstrated that the alternative providers' services are different and offered at a variety of prices, but that showing does not overcome the commission's finding that those services are providing reasonable competitive substitutes for basic local exchange service. We defer to the commission's expertise on this matter. Accordingly, we reject OCC's argument.

(AT&T Opposition at 7 citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, ¶¶21, 22).

Regarding OCC's focus on the issue of the "public interest" criterion set forth in Section 4927.03, Revised Code, and the assertion that the issue was not brought before the Ohio Supreme Court for consideration, AT&T responds that the court clearly concluded that the competitive tests adopted by the Commission meet the statutory criteria. In support of its position, AT&T references the court's determination that:

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.

(AT&T Memorandum Contra at 4 citing *Ohio Consumers' Counsel v. Pub. Util. Comm.* ¶52).

Further, AT&T submits that the Commission was charged with adopting rules to implement the BLES alternative regulation statute and the competitive tests reflect the policy choices made by the Commission with respect to this obligation. AT&T points out that the competitive tests established by the Commission were subject to the legislative rule review process and were upheld on appeal to the Ohio Supreme Court. Therefore, AT&T asserts that there is no need for the applicant to demonstrate compliance with each aspect of the statutory criteria provided it satisfies one of the objective competitive market tests (*Id.* at 8). Specific to this proceeding, AT&T believes that the company has satisfied the requirements of Test 4 and, therefore, satisfies the public interest criterion of the statute (*Id.* at 13).

Commission Conclusion

We first address OCC's argument that AT&T has failed to meet its burden of proof required by Section 4927.03, Revised Code, because it did not establish that alternative providers have stand-alone BLES offerings that are available at competitive rates, terms, and conditions (OCC Opposition at 5, 12). The Commission notes that OCC has reiterated the same arguments that the Commission considered in the 05-1305, 06-1002, and 06-1013 proceedings. Consistent with our prior determinations in 05-1305, 06-1002, and 06-1013 proceedings, the Commission finds that OCC's argument with respect to this contention is denied.

Based on the record, we find that the actual substitution by end users of AT&T's BLES with wireless, voice over Internet protocol (VoIP), cable, and CLEC wireline services demonstrates that these providers customize their service offerings in order to be able to meet different customers' needs and lifestyles. As a result, these service offerings are viewed by many consumers as reasonable substitutes for BLES (AT&T Application at 3-10 and Ex. 3). Customers subscribing to services offered by various alternative providers, and not subscribing to AT&T's BLES, demonstrate that end users find the alternative providers' services to be a reasonable alternative and substitute for the ILECs' BLES offerings when considering factors such as service quality, rates, terms, and conditions. Otherwise, it is reasonable to conclude that they would not have switched from AT&T's BLES.

Consistent with this determination, we reject the OCC's argument that wireless providers should not be considered as alternative providers for BLES based on the contention that only a small subset of the population actually replaces their BLES service with wireless providers (Hardie Affidavit at 11, 13). We find that the record in the instant proceeding demonstrates that customers in the exchanges listed in Attachments A and B substitute their AT&T service with various services offered by the wireless alternative providers identified in the relevant exchanges (AT&T Application Ex. 3).

Based on the criteria set forth in Rule 4901:1-4-10, O.A.C., to the extent that AT&T is losing BLES customers and the requisite number of alternative providers are present, as

demonstrated by the data presented by AT&T's applications, it is evident that functionally equivalent or substitute services are readily available to customers in the exchanges listed in Attachment A of this Opinion and Order.

The Commission notes that the Ohio Supreme Court, in affirming the Commission's decision in AT&T's 06-1013 proceeding involving Tests 3 and 4, rejected an identical argument by OCC. Specifically, the court stated:

OCC's argument fails to recognize the legislative guidance provided by the changes to the policy section of the chapter in R.C. 4927.02. The General Assembly provided the commission with new standards to consider when determining eligibility for alternative regulation, and those standards included the consideration of the larger environment of voice communication providers.

(*Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, ¶21).

The court further stated:

The commission determined that customers are switching service in the presence of competitors and that those customers find the alternative services to be adequate substitutes for AT&T's services. The court will not reverse or modify a commission decision as to questions of fact in cases in which the record contains sufficient probative evidence to show that the commission's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm.*, 104 Ohio St.3d 571, 2004-Ohio-6896, 820 N.E.2d 921, ¶29. OCC has demonstrated that the alternative providers' services are different and offered at a variety of prices, but that showing does not overcome the commission's finding that those services are providing reasonable, competitive substitutes for basic local exchange service. We defer to the commission's expertise on this matter. Accordingly, we reject OCC's argument.

(*Id.* at ¶22).

Likewise, we reject OCC's allegation that as the alternative providers identified by AT&T do not have stand-alone BLES offerings that are available at competitive rates, terms, and conditions, granting AT&T's application would not be in the public interest (OCC Opposition at 3, 5, 7, 11, 12, 16). We note that OCC is raising the same argument that the

Commission previously considered in the 05-1305, 06-1002, and 06-1013 proceedings. Contrary to OCC's allegations, we find the record clearly demonstrates that customers in the exchanges listed in Attachment A have a considerable number of readily available alternatives to AT&T's BLES. We conclude that such a finding coupled with the customer protection provisions in Rule 4901:1-4-11, O.A.C., such as the cap on the BLES rate increase and the exclusion of lifeline customers' rates from any rate increase, is in the public interest. This finding is consistent with the Ohio Supreme Court's statements regarding this issue, in affirming the Commission's decision in AT&T's 06-1013 proceeding involving Tests 3 and 4. Specifically, the Ohio Supreme Court stated:

R.C. 4927.02 requires the commission to consider the regulatory environment for competing services and to reduce the regulation of telephone companies in the presence of increasing competition. The commission established its rules in accordance with the policy set forth in R.C. 4927.02(A) and determined that certain measures, such as annual rate caps, minimum access requirements for low-density areas, and economic assistance to eligible consumers, protected consumers without unduly interfering with the market and without disadvantaging local exchange carriers. The commission's position gives meaning to the H.B. 218 policy changes in R.C. 4927.02, which identifies the General Assembly's view of the public interest.

(Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, ¶49).

The court also stated:

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.

(Id. at ¶50).

The court further stated:

Having considered them carefully, we affirm the commission's finding that AT&T's application is in the public interest and reject OCC's argument.

(Id. at ¶51).

4. Market Share

OCC's Position

OCC states that the Commission must consider market power issues, including market share and growth in market share, when considering whether an alternative provider's service is functionally equivalent to or a substitute for an ILEC's BLES. OCC believes that market share is a useful measure of whether the alternative provider is actually offering a competing service to the ILECs BLES in order to exert competitive pressure on an ILEC's BLES prices if the ILEC was granted alternative regulation. According to OCC, "[c]arriers with barely more than a toehold in a given residential market twelve years after passage of the Telecommunications Act of 1996 would clearly not be able to exert competitive pressure on the ILEC's BLES prices if the ILEC were granted alternative regulation" (Hagans Affidavit at ¶21). OCC asserts that nearly all of the alleged alternative providers do not really provide competing services to AT&T's basic service and/or do not have a presence in the identified AT&T exchanges sufficient to discipline AT&T's prices (OCC Opposition at 4). OCC opines that the threshold market share for alternative providers is five percent. To the extent that the market share of all alternative providers in a particular exchange is less than five percent, OCC posits that it will not be enough to exert competitive pressure on AT&T BLES rates and customers will most likely experience higher prices as a result of competition (Hagans Affidavit at ¶29). Additionally, OCC asserts that in some exchanges several of the alternative providers do not provide service throughout the entire exchange and, therefore, not all customers in the exchange will have access to the same number of alternative providers (*Id.* at ¶¶31-36).

AT&T's Position

In response to OCC's assertion that, in order for an alternative provider to have a presence, it must be serving a minimum number of customers and must be actively marketing in the specific exchange, AT&T simply focuses on whether an alternative provider is actually providing service in the exchange. The company rejects any belief that each and every residential customer within a given exchange must have five alternative providers available to them in order to satisfy the competitive market tests. Additionally, AT&T notes that resellers and all collocated CLECs have access to each residential subscriber in an exchange and that VoIP and wireless carriers are not constrained by exchange boundaries (AT&T Memorandum Contra at 13, 14).

Commission Conclusion

As in 06-1013, the Commission rejects OCC's contention that an alternative provider must serve a minimum number of customers in an exchange in order to be considered for the purpose of a competitive market test. In addition, the Commission rejects OCC's

contention that the Commission's competitive market tests fail to consider the size of alternative providers, their market shares, and their longevity in the market. In establishing the specific criteria for the competitive market tests in 05-1305, the Commission properly considered all relevant factors and attempted to establish a balanced approach for determining if the statutory intent of Section 4927.03, Revised Code, was satisfied. The Commission would point out that the Supreme Court of Ohio, in affirming the Commission's decision in AT&T's 06-1013 proceeding, rejected an identical argument by OCC. Specifically, the Supreme Court of Ohio stated:

R.C. 4927.03(A)(2)(d) enumerates factors to be considered by the commission. Those factors include "[o]ther indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services." Ultimately this is a factual determination. In essence, OCC is attempting to attack a factual determination by the commission. But OCC has failed to show that the commission's decision is unsupported by sufficient record evidence, and this court will not substitute its judgment for that of the commission.

(Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, ¶29).

The court further stated:

Understanding of the current market is crucial to the analysis here. We defer to the commission's expertise in this regard. The commission complied with R.C. 4927.03(A)(2) by designing a test that, in its judgment, measures the extent of competition in the relevant market and made a factual finding based on the record and its expertise. We reject OCC's challenge to the commission's determinations.

(Id. at ¶31).

The Commission also rejects OCC's requirement that AT&T verify that an identified alternative provider makes the service available to the entirety of a market in order to demonstrate that the alternative provider's service offering is readily available within the relevant market. The Commission would point out that the Supreme Court of Ohio, in affirming the Commission's decision in AT&T's 06-1013 proceeding, rejected an identical argument by OCC. Specifically, the Supreme Court of Ohio stated:

We affirm the commission's finding that alternative providers have services readily available in AT&T's exchanges. The commission established the exchange area to judge the overall presence in that

area, not a subset of that area. The commission found no requirement in the law or in its rules that an alternative provider must serve 100 percent of the relevant market. The commission points out that OCC supported using the telephone exchange as the relevant market in the 05-1305 rulemaking case. The area is small enough to share common characteristics while still providing years of historical data. Thus, it is reasonable to accept the commission's determination to judge the area as a whole.

(*Id.* at ¶26).

Accordingly, we find that, based on the data in the record, the wireline and wireless alternative provider's service offerings are readily available within the relevant exchanges listed in Attachment A.

B. Competitive Market Test 4

1. Access Line Loss

The Commission notes that OCC did not dispute the issue of access line loss. Based on the data presented by AT&T (AT&T Application, Ex. 3), we conclude that AT&T's application satisfies the line loss criteria for Test 4 in the following exchanges: Chagrin Falls, Christiansburg, Hillcrest, Independence, Painesville, Pitchin, Uhrichsville, and Willoughby. In so concluding, we find that at least 15 percent of total residential access lines in each of these eight exchanges have been lost since 2002.

2. Facilities-Based Alternative Provider

As discussed below, we find that, based on the data in the record, the wireline providers identified by AT&T and delineated in Attachments A and B of this Opinion and Order satisfy the facilities-based criteria of Test 4 (AT&T Application, Ex. 3).

We note that OCC did not dispute that any of the alternative providers identified in AT&T's applications are facilities-based for the purposes of meeting the second prong of Test 4. Therefore, for the purpose of satisfying the requirements of the second prong of Test 4, we determine that the following carriers are facilities-based, alternative providers: ACN Communication Services (ACN), Budget Phone, Cox Communications, First Communications, MCI/WorldCom, Revolution Communications (Revolution), Sage Telecom (Sage), Talk America/Cavalier, and Trinsic Communications (Trinsic).

Additionally, with respect to Alltel Wireless, Cincinnati Bell Wireless, Sprint/Nextel, and Verizon Wireless, we find that these wireless providers are unaffiliated, facilities-based providers for the purpose of satisfying the second prong of Test 4.

With respect to the issue of the identification of unaffiliated, facilities-based alternative providers, the Commission notes that AT&T has not identified any affiliated provider in its application. Therefore, we find that the identified alternative providers listed in Attachments A and B of this Opinion and Order satisfy the requisite "unaffiliated" criterion of Test 4.

3. Market Presence

OCC's Position

Rather than simply relying on whether an entity is present in the market, OCC asserts that the Commission must consider market power issues, including market share and change in market share. OCC submits that just because a carrier is providing service to a handful of consumers does not signify that AT&T's BLES service offering is subject to competition or that the alternative provider is offering reasonably available alternatives (Hagans Affidavit at ¶22). OCC posits that the market share of the wireline carriers is insufficient to discipline AT&T's prices and that the customers in the requested eight exchanges will experience higher prices instead of the lower prices which are supposed to be the result of competition (*Id.* at ¶27; OCC Opposition at 20, 21).

At a minimum, OCC contends that Alltel Wireless cannot be counted in the Christiansburg and Pitchin exchanges because it does not provide any service in those exchanges (*Id.* at 13). Additionally, OCC believes that Talk America should be removed as an alternative provider in the Uhrichsville Exchange because it does not appear to provide service in that exchange (*Id.* at 22). Based on its position, OCC concludes that there are no more than four unaffiliated, facilities-based alternative providers in the Christiansburg and Pitchin exchanges. Therefore, OCC concludes that AT&T's request relative to these two exchanges should be denied inasmuch as the company has failed to satisfy the Test 4 criteria.

AT&T's Position

AT&T opines that for the purpose of satisfying the criterion of market presence, the essential issue is whether a carrier is present or absent in an exchange. With respect to the alternative providers identified in its application, AT&T asserts that they are all present, providing service, and have residential customers (AT&T Memorandum Contra at 13, 14).

Commission Conclusion

The Commission recognizes that OCC raised these same arguments in the 06-1002, and 06-1013 proceedings. We reject the OCC's narrow interpretation of Section 4927.03, Revised Code, and Rule 4901:1-4-10(C), O.A.C., inasmuch as it is overly restrictive in scope.

The Supreme Court of Ohio, in affirming the Commission's decision in AT&T's 06-1013 proceeding, rejected an identical argument by OCC. Specifically, the Supreme Court of Ohio stated that:

We affirm the commission's finding that alternative providers have services readily available in AT&T's exchanges. The commission established the exchange area to judge the overall presence in that area, not a subset of that area. The commission found no requirement in the law or in its rules that an alternative provider must serve 100 percent of the relevant market. The commission points out that OCC supported using the telephone exchange as the relevant market in the 05-1305 rulemaking case. The area is small enough to share common characteristics while still providing years of historical data. Thus, it is reasonable to accept the commission's determination to judge the area as a whole.

(Ohio Consumers' Counsel v. Pub. Util. Comm., 117 Ohio St.3d 301, ¶26).

The Commission finds that the coverage maps and data provided by AT&T for Alltel Wireless, Cincinnati Bell Wireless, Sprint/Nextel, and Verizon Wireless demonstrate that their wireless service offerings are readily available to customers of the exchanges identified in Attachment A of this Opinion and Order, and, therefore, satisfy the "market presence" requirement of the second prong of Rule 4901:1-4-10(C)(4), O.A.C. Specifically, the Commission finds that, in the relevant exchanges listed in Attachment A of this Opinion and Order, AT&T's application demonstrates that Alltel Wireless, Cincinnati Bell Wireless, Sprint/Nextel, and Verizon Wireless advertise the availability and coverage of their service offerings in the relevant exchanges on their websites. Therefore, we find that these four wireless providers meet the "presence in the market" requirement of Test 4 in the relevant exchanges identified in Attachment A of this Opinion and Order. Similarly, the Commission finds that the coverage areas of Cox Communications satisfy the "market presence" criteria for the purpose of being considered as an alternative provider in the Independence Exchange.

As to the CLECs identified by AT&T for satisfying Test 4 requirements, we note, and OCC does not dispute, that:

- (1) AT&T can distinguish its BLES customers from CLECs' customers.
- (2) CLECs providing residential service are in fact offering their services via their current tariffs.

We find that the residential White Pages listing, residential Local Wholesale Complete (LWC) access line data, and residential 9-1-1 data provided in the record demonstrates that the CLECs identified in Attachments A and B to this Opinion and Order offer service to residential customers in the relevant exchanges. Also, the record demonstrates that those CLECs maintain current tariffs on record with the Commission in which residential services are offered to current and prospective customers, in the relevant exchanges. Additionally, the record demonstrates that most of the CLECs providing residential service are in fact advertising their offerings on their respective websites in the relevant exchanges. We disagree with OCC's allegation that Talk America should not be counted as an alternative provider in the Uhrichsville Exchange as it does not provide services in that exchange (Hagans Affidavit at ¶31). We find that, in addition to the residential lines which Talk America leases from AT&T and the residential White Pages listings in the Uhrichsville Exchange, the examination of Talk America's tariff on record with the Commission demonstrates that Talk America offers residential service in the Uhrichsville Exchange.⁴

Accordingly, we find that the following unaffiliated, facilities-based wireline alternative providers satisfy the market presence requirement of the second prong of Test 4 in the relevant exchanges identified in Attachments A and B to this Opinion and Order: ACN, Budget Phone, Cox Communications, First Communications, MCI/WorldCom, Revolution, Sage, Talk America/Cavalier, and Trinsic.

4. Serving the Residential Market

OCC's Position

OCC argues that in order for carriers to be considered as facilities-based alternative providers for the purpose of Test 4, AT&T needs to make a showing that they serve the residential market by actively marketing service to residential customers (Hagans Affidavit at ¶23). Additionally, OCC submits that wireless carriers should not be counted in exchanges in which they have not ported numbers. With respect to the identified wireless providers, OCC submits that, based on the Commission's determination in 06-1013 Opinion and Order at 32, Alltel Wireless, Cincinnati Bell Wireless, Sprint/Nextel, and Verizon Wireless should be rejected because they have no White Pages listings in any exchanges.

AT&T's Position

To identify those alternative providers that are serving the residential market, AT&T relied on criteria identified on the exchange summary sheet for each exchange (AT&T Application, Ex. 3). To collect information on CLEC and alternative provider activity in AT&T's exchanges, AT&T states that it reviewed publicly available sources such as

⁴ Talk America's tariff at PUCO tariff No. 2, Section 4, original page 92.

websites, tariff filings, wireless licenses, certification cases, and interconnection agreements. Moreover, to confirm publicly available information, AT&T reviewed internal data from billing, E9-1-1 records, White Pages listings, and ported telephone number information (*Id.* at 3).

Commission Conclusion

Test 4 requires AT&T to show that there are at least five unaffiliated facilities-based alternative providers serving the residential market in the exchange. We find that OCC does not dispute that the nine wireline alternative providers identified by AT&T are providing services to the residential market (except OCC's allegation that Talk America does not provide services in the Uhrichsville Exchange). The record demonstrates that the alternative providers identified by AT&T that are CLECs have residential tariffs on file with the Commission, and residential listings in the White Pages, in the relevant exchanges listed in Attachments A and B (AT&T Application, Ex. 3). Additionally, the Commission notes that some of the carriers have subscribers with telephone numbers ported from AT&T. Most of the alternative providers identified by AT&T also maintain websites that advertise residential service offerings in the relevant exchange (*Id.*). As to Cox Communications, the record demonstrates that it has residential listings in the White Pages directory and ported phone numbers from AT&T in the Independence Exchange. Accordingly, we conclude that the unaffiliated, facilities-based alternative providers listed above provide their services to residential customers in the relevant exchanges as identified in Attachments A and B of this Opinion and Order.

Relative to the wireless providers identified in AT&T's application, we find that Alltel Wireless, Cincinnati Bell Wireless, Verizon Wireless, and Sprint-Nextel advertise the availability and coverage of their service offerings in the relevant exchanges. In addition, there are residential customers who did in fact disconnect AT&T's BLES service and ported their phone number to the aforementioned wireless providers in the exchanges identified in Attachment A of this Opinion and Order (Hardie Affidavit at ¶7).

We would clarify that, based on data submitted by AT&T, a wireless provider is not considered to satisfy the "providing residential service" criteria of Test 4 in a specific exchange absent evidence that such wireless provider is in fact serving residential customers in that exchange, i.e., absent evidence of porting phone numbers. Contrary to Ms. Hardie's allegation (Hardie Affidavit at 13, footnote 12), and consistent with all Commission's conclusions in the prior BLS Opinion and Orders, lack of evidence that a wireless provider has a residential White Pages listings was never a basis to exclude such wireless provider as a valid alternative provider serving residential customers. The Commission is not aware of wireless providers, as a common practice, listing their customers in the White Pages directories. Therefore, it is not reasonable for the Commission to consider wireless listings in the White Pages directories as evidence that a wireless provider is serving residential customers. On the other hand, based on data submitted by

AT&T, a wireline alternative provider such as a CLEC or a VoIP-based provider is not considered to satisfy the "providing residential service" criteria of Test 4 in a specific exchange absent evidence that such wireline provider is in fact serving residential customers in that exchange (i.e., absent evidence of either residential White Pages listing or porting phone numbers).

Ms. Hardie's allegations are premised on references to incomplete statements from the Opinion and Order in 06-1013.⁵ A close examination of these statements clearly demonstrates that the Commission does not reject a wireless provider as satisfying the second prong of Test 4 if AT&T fails to show that such wireless provider has listings in the White Pages directories. This conclusion is evident based on the following statement:

Specific to the Lewisville and Murray City exchanges, the Commission determines that, although AT&T Ohio identified Alltel Wireless and Sprint/Nextel as alternative providers, the record does not support the allegation that the carriers are providing residential service within the exchanges (i.e., no evidence of ported numbers). [Emphasis added]

(06-1013, Opinion and Order at 32).

The partial statements referenced by Ms. Hardie were specifically addressing the operations of both wireless and wireline providers in an exchange and not the operation of only wireless providers, in an exchange.

Next, we address AT&T's argument that, "while the presence of ported numbers demonstrates a carrier's presence in the exchange, the lack of ported numbers does not prove that the carrier is not present" (AT&T Memorandum in Support at 7). The Commission limits its consideration to the evidence provided by the applicant in the record. In the instant case, while, as discussed above, AT&T has demonstrated a presence in the market, AT&T's evidence regarding whether a wireless provider is serving residential customers in a particular exchange was limited to the ported telephone number data associated with that wireless provider in the specific exchange. Thus, the ported telephone number data was the only basis in the record from which to determine whether residential customers are being served by wireless carriers in the identified exchanges. The Commission emphasizes that nothing limits AT&T, or any other ILEC, from using data other than (or in addition to) ported telephone numbers to demonstrate that a wireless provider is in fact present and serving residential customers in a given exchange.

⁵ Hardie Affidavit at 13, footnote 12.

V. TARIFF AMENDMENTS

AT&T filed the proposed tariff modifications necessary to implement the pricing flexibility rules set forth in Rule 4901:1-4-09(A), O.A.C. The necessary tariff revisions include modifying the tariff structure to separate the competitive exchanges from the noncompetitive exchanges. For tracking purposes, the exchanges appear in a matrix format. This format includes columns for tier classification, maximum rate, and the effective date of the proposed increase in the maximum rate. In exchanges that AT&T is requesting competitive treatment, the company is proposing to apply any allowable BLES increase to the access line portion of the monthly charge. The actual monthly charge has not been increased in this application. Pricing flexibility rules also allow certain other non-core Tier 1 services to receive Tier 2 pricing flexibility. AT&T's proposed tariff reflects these changes as well. The Commission finds that the proposed tariff is just and reasonable specific to those exchanges approved pursuant to this Opinion and Order.

VI. OUTSTANDING PROCEDURAL MATTERS

OCC submits that, based on the arguments presented in its opposition to AT&T's application and the corresponding affidavits, clear and convincing evidence has been presented that extraordinary circumstances exist warranting a hearing on the application before AT&T should be granted stand-alone BLES alternative regulation for any exchange included in the application (OCC Opposition at 4). AT&T asserts that OCC has presented no rational basis for the Commission to set this matter for hearing (AT&T Memorandum Contra at 21).

Based on the discussion and determinations incorporated within this Opinion and Order, the Commission does not believe that a hearing is necessary. Therefore, we find that OCC's request for a hearing should be denied.

On June 18, 2008, OCC filed a motion to dismiss AT&T's application as it pertains to the Pitchin Exchange. In support of its motion, OCC points out that AT&T included additional information regarding the Pitchin Exchange in the company's subsequent application in Case No. 08-594-TP-BLS. By doing so, OCC asserts that AT&T improperly supplemented its application in 08-107 and, therefore, the Commission should dismiss the 08-107 application as it applies to the Pitchin Exchange.

Although OCC's application is moot, inasmuch as the Commission has denied AT&T's application relative to the Pitchin Exchange on the merits of the filing, the Commission agrees with OCC that it is inappropriate for an applicant to file an application for a specific exchange while an application encompassing the same exchange is still pending before the Commission. Such an approach is a misuse of the procedures established for seeking alternative regulation of BLES pursuant to Chapter 4901:1-4, O.A.C.

On March 24, 2008, OCC filed a motion for a protective order concurrently with its opposition to AT&T Ohio's application. OCC states that its filing contains information that AT&T regards as confidential. While not necessarily agreeing that all of the information is confidential, OCC, nevertheless, seeks protective treatment in accordance with a protective agreement entered into with AT&T. The Commission finds OCC's motion to be reasonable. Therefore, the motion is granted and the identified material shall be protected as addressed below.

VII. CONCLUSION

Upon a thorough review of the record in this proceeding, the Commission determines that, pursuant to Section 4927.03(A), Revised Code, AT&T has met its burden of proof for those exchanges identified in Attachment A of this Opinion and Order. Specifically, AT&T has demonstrated that the granting of the company's application for BLES and other Tier 1 service flexibility in the designated exchanges in Attachment A is in the public interest, that AT&T's BLES is subject to competition, that the company's customers have reasonably available alternatives, and that there are no barriers to entry with respect to BLES in those exchanges.

Moreover, as discussed in detail above, the Commission determines that AT&T's application is complete and meets the filing requirements of Rule 4901:1-4-09, O.A.C. The Commission recognizes its statutory charge to maintain a balance between ensuring the availability of stand-alone BLES at just and reasonable rates, while at the same time recognizing the continuing emergence of a competitive environment through flexible regulatory treatment.

In accordance with Chapter 4927, Revised Code, and Chapter 4901:1-4, O.A.C., the Commission determines that AT&T's application for alternative regulation of basic local exchange and other Tier 1 services should be approved consistent with the terms of this Opinion and Order, for those exchanges designated in Attachment A of this Opinion and Order. With respect to the exchange designated in Attachment B, the application is denied inasmuch as it does not meet all of the criteria set forth in the relevant competitive market tests as discussed in this Opinion and Order. Specifically, the Commission notes that for the Pitchin Exchange, AT&T only identified four entities that qualify as unaffiliated facilities-based alternative providers. In reaching this determination the Commission determined that there is no evidence that the identified wireless providers are serving residential customers in the Pitchin Exchange.

VIII. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On February 8, 2008, AT&T filed an application for approval of an alternative form of regulation of BLES and other Tier 1 services in 8

exchanges in its incumbent service territory. AT&T filed its application pursuant to Section 4927.03, Revised Code, and Chapter 4901:1-4, O.A.C.

- (2) Rule 4901:1-4-10(C), O.A.C., sets forth four competitive tests. In order to qualify for pricing flexibility for BLES and other Tier 1 services in a particular exchange, the applicant has the burden to demonstrate that it meets at least one of the competitive market tests set forth in the rule.
- (3) AT&T relies on the competitive test set forth in Rule 4901:1-4-10(C)(4), O.A.C., for all of the requested exchanges.
- (4) On March 24, 2008, OCC filed a pleading opposing AT&T's application.
- (5) On April 3, 2008, AT&T filed a memorandum opposing OCC's March 24, 2008, pleading.
- (6) OCC filed a reply to AT&T's memorandum on April 8, 2008.
- (7) AT&T's application complies with the filing requirements of Rule 4901:1-4-09, O.A.C.
- (8) Consistent with the criteria set forth in Rule 4901:1-4-10(C)(4), O.A.C., AT&T satisfies the applicable test and is granted alternative regulation of basic local exchange and other Tier 1 services pursuant to Chapter 4927, Revised Code, and Chapter 4901:1-4, O.A.C., for those exchanges identified in Attachment A of this Opinion and Order.

It is, therefore,

ORDERED, That AT&T's application for alternative regulation of BLES and other Tier 1 services is granted in part and denied in part, as discussed above. It is, further,

ORDERED, That for those exchanges identified in Attachment A of this Opinion and Order, AT&T is granted Tier 2 pricing flexibility for all Tier 1 noncore services and BLES and basic Caller ID will be subject to the pricing flexibility provided for pursuant to Rule 4901:1-4-11, O.A.C. It is, further,

ORDERED, That, consistent with Rule 4901:1-4-11, O.A.C., AT&T shall provide customer notice to affected customers a minimum of thirty days prior to any increase in rates. It is, further,

ORDERED, That the proposed tariff revisions are approved relative to the exchanges for which BLES alternative regulation is granted. It is, further,

ORDERED, That AT&T is authorized to file complete copies of tariffs in final form consistent with this Opinion and Order. AT&T shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR), and one copy in this case docket. It is, further,

ORDERED, That OCC's request for a hearing is denied. It is, further,

ORDERED, That OCC's motion to dismiss AT&T's application as it pertains to the Pitchin Exchange is moot. It is, further,

ORDERED, That, to the extent not addressed in this Opinion and Order, all other arguments are denied. It is, further,

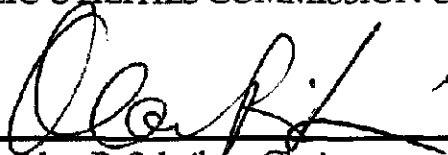
ORDERED, That our approval of AT&T's application, to the extent set forth in this Opinion and Order, does not constitute state action for the purpose of antitrust laws. It is not our intent to insulate the company from the provisions of any state or federal law that prohibit the restraint of trade. It is, further,

ORDERED, That, except as specifically provided for in this Opinion and Order, nothing shall be binding upon the Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That the Docketing Division maintain for 18 months from the date of this Opinion and Order, all documents that were filed under seal in conjunction with OCC's motion for protective order filed on March 24, 2008. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

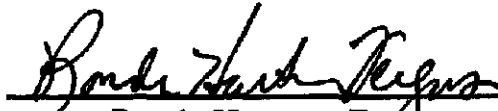
THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie



Cheryl L. Roberto

JSA;geb

Entered in the Journal

JUN 25 2008



Renee J. Jenkins
Secretary

AT&T Ohio
Case No. 08-107-TP-BLS
Test 4 Results

<u>Exchange Name</u>	<u>Test Used</u>	<u>% Access Lines Lost</u>	<u># of Unafit. F.B. Alt. Providers</u>	<u>Names of Unaffiliated F.B. alt. providers</u>	<u>Test #4 Result</u>
1 Chagrin Falls	4	15.17%	10	ACN Communication First Communications MCI / WorldCom Revolution Comm. Sage Telecom Talk America Trinsic Comm. Alltel Wireless Sprint/Nextel Verizon Wireless	Approved
2 Christiansburg	4	18.96%	6	First Communications MCI / WorldCom Sage Telecom Trinsic Comm. Cincinnati Bell Wireless Verizon Wireless	Approved
3 Hillcrest	4	16.13%	10	ACN Communication First Communications MCI / WorldCom Revolution Comm. Sage Telecom Talk America Trinsic Comm. Alltel Wireless Sprint/Nextel Verizon Wireless	Approved
4 Independence	4	15.01%	10	ACN Communication Cox Communications First Communications MCI / WorldCom Revolution Comm. Sage Telecom Trinsic Comm. Alltel Wireless Sprint/Nextel Verizon Wireless	Approved

ACN Communication
 First Communications
 MCI / WorldCom
 Revolution Comm.
 Sage Telecom
 Talk America
 Trinsic Comm.
 Alltel Wireless
 Sprint/Nextel
 Verizon Wireless

5 Painesville 4 15.53% 10 Approved

ACN Communication
 Budget Phone
 First Communications
 MCI / WorldCom
 Revolution Comm.
 Sage Teleocm
 Talk America
 Trinsic Comm.
 Alltel Wireless
 Sprint/Nextel

6 Uhrichsville 4 16.36% 10 Approved

ACN Communication
 First Communications
 MCI / WorldCom
 Revolution Comm.
 Sage Telecom
 Talk America
 Trinsic Comm.
 Alltel Wireless
 Sprint/Nextel
 Verizon Wireless

7 Willoughby 4 16.20% 10 Approved

AT&T Ohio
Case No. 08-107-TP-BLS

<u>Exchange Name</u>	<u>Test Used</u>	<u>% Access Lines Lost</u>	<u># of Unafft. F.B. Alt. Providers</u>	<u>Names of Unaffiliated F.B. alt. providers</u>	<u>Test #4 Result</u>
Pitchin	4	16.63%	4	First Communications MCI / WorldCom Sage Telecom Trinsic Communications	Denied