

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Amendment of the)	
Minimum Telephone Service Standards)	Case No. 00-1265-TP-ORD
As Set Forth in Chapter 4901:1-5 of the)	Case No. 05-1102-TP-ORD
Ohio Administrative Code.)	

**COMMENTS
OF
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THE EMPOWERMENT CENTER OF GREATER CLEVELAND, CONSUMERS
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COALITION**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), on behalf of residential utility consumers,¹ submits comments on the proposal by the staff of the Public Utilities Commission of Ohio ("PUCO" or "Commission") to eliminate twenty years of consumer protections against disconnection of basic service, as found in Ohio Adm. Code 4901:1-5-10(B) ("Rule 10(B)") and its predecessor provisions.² The Commission adopted the original version of Rule 10(B) in its Opinion and Order in Case No. 05-1102 on February 7, 2007 ("2007 Order") and, in an Entry on Rehearing issued on July 11, 2007 ("2007 Rehearing Entry"), slightly modified it with language proposed by the Ohio Telecom Association ("OTA"). The rule allows residential and small business customers to retain

¹ OCC has legislative authority to represent the residential utility consumers of Ohio pursuant to Chapter 4911 of the Ohio Revised Code.

² The PUCO staff's proposal was set forth in an Entry dated July 31, 2008 ("July 31 Entry").

basic local exchange service (“basic service” or “BLES”) so long as they pay their carrier’s tariffed basic service rate. This rule maintained the Commission’s long-standing goal of ensuring that customers would not lose basic service for nonpayment of nonregulated charges.

The Commission upheld Rule 10(B) on rehearing in the rulemaking proceeding, reaffirmed the rule in a May 14, 2008 Entry (“May 14 Entry”) denying two telephone industry waiver requests, and again reaffirmed the rule in an entry denying rehearing of the May 14 Entry. Nevertheless, in the face of a third waiver request, the Commission reopened consideration of Rule 10(B) “for the limited purpose of calling for comment on whether there are alternative means that would better balance the competing state policies found in Section 4927.02, Revised Code.”³

As part of this reconsideration, the Commission seeks comment on a PUCO staff proposal to delete Rule 10(B). Instead of providing customers of service bundles a means for at least retaining basic service, the PUCO staff’s proposal states: “[W]here two or more services are offered together under a package price, a failure to timely pay the entire package price may render as past due the charges for all of services included in the package and, as such, may result in disconnection of all services included in the package.”⁴ The PUCO staff’s proposal does not differentiate between local or toll or between regulated and nonregulated services. Thus, residential consumers of service bundles could lose their basic service for nonpayment of charges for toll calling or for nonregulated services (e.g., cable television or broadband).

³ July 31 Entry at 5.

⁴ Id. at Appendix.

In order to ensure that consumers can at least retain access to basic service, the Commission should reject the PUCO staff's proposed deletion of Rule 10(B). Instead, the Commission should retain Rule 10(B), either as adopted in the 2007 Order or as modified as discussed herein.

II. BACKGROUND

The PUCO has long had a goal of ensuring that consumers stay connected to basic telephone service in situations where payment made is less than the total bill. A full discussion of that history is necessary to put the PUCO staff's current proposal into context.

In 1988, the Commission established a policy prohibiting the disconnection of local service for nonpayment of toll charges for which the local exchange carrier had not provided billing and collection services and had not purchased the interexchange carrier's accounts receivable in advance.⁵ The policy also required local exchange carriers to apportion partial payments to regulated local and toll charges before applying subscriber payments to charges for any other services.⁶

Then in 1996, the Commission adopted a policy that prohibited the disconnection of a residential customer's local service for nonpayment of any toll charges. In adopting this disconnection for nonpayment ("DNP") policy, the Commission noted that the public benefit of allowing customers to retain local service outweighed the costs that local exchange carriers would bear in keeping customers on the network:

⁵ *In the Matter of the Commission Investigation into the Disconnection of Basic Local Exchange Service for Failure to Pay Message Toll Service*, Case No. 85-1930-TP-COI, Opinion and Order (April 14, 1988).

⁶ *Id.*

[F]or the first time, all providers of service [sic] telephone service will be equipped with the same set of tools to aid in account collection. No longer will local service providers enjoy a competitive advantage over other companies who conduct billing and collection activities, including those who engage in such work exclusively. This competitive equilibrium will result from a diminution in the number of weapons which had heretofore been available within the collection arsenal of local service providers. It may, indeed, leave no business entity holding a collection device which matches DNP's proven efficiency, power, and effectiveness. Most important, however, among the trade-offs for this loss will be the fact that, for the first time, customers who remain current in paying for the local telephone service they receive can no longer be threatened with loss of that service for nonpayment of unrelated debt. The Commission believes that the societal costs of restoring such basic fairness to local service customers who pay for such service in a timely manner are not out of proportion with the public benefit to be derived therefrom.⁷

In the next year, the Commission codified in its Minimum Telephone Service Standards ("MTSS") a rule requiring that customers' partial payments must first be applied to regulated local service charges before being applied to toll charges.⁸

In 2001, the Commission amended the partial payment rule so that partial payments were applied first to "past due regulated local service charges, then to any current local charges, before being applied ... to any toll or nonregulated charges unless the subscriber pays the entire amount past due or more."⁹ If the customer paid the entire past due amount or more, then "any amount paid over the amount past due shall be applied first to current local charges."¹⁰ The Commission's intent in amending the partial

⁷ *In the Matter of the Commission Investigation into the Disconnection of Basic Local Exchange Service for the Nonpayment of Charges Associated with Services Other Than Basic Local Exchange Service*, Case No. 95-790-TP-COI, Finding and Order (June 12, 1996) at 19.

⁸ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 96-1175-TP-ORD, Finding and Order (June 26, 1997), adopted Ohio Adm. Code 4901:1-5-19(C).

⁹ *In the Matter of the Amendment of the Minimum Telephone Service Standards As Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 00-1265-TP-ORD, Finding and Order (May 29, 2001), adopted Ohio Adm. Code 4901:1-5-17(C) ("Rule 17(C)").

¹⁰ *Id.*

payment rule was to “protect a customer’s interest in keeping current on the local service portion of his bill by making a partial payment that is large enough to do so – thereby avoiding local service disconnection....”¹¹

The Commission further addressed the issue of partial payments for bundled services in its Local Service Guidelines proceeding in 2003. The Commission determined that it needed “to add an option for applying partial payments made by a customer that are insufficient to cover the package price.”¹² The Commission stated that the rationale for its policy change was to “insure[] that local service is not disconnected for toll and/or unregulated services, when customers are billed at a single packaged rate for both regulated and toll and/or unregulated services.”¹³ In order to accomplish this, the Commission created two options that applied equally to incumbent local exchange carriers (“ILECs”) and to competitive local exchange carriers (“CLECs”).¹⁴

Under Option 1, ILECs and CLECs were required to tariff only the regulated components of service bundles that include both regulated local services and unregulated services. The regulated components would be tariffed either as a package at a separate, single rate for the regulated components, or individually at individual tariffed rates. The unregulated service components of any package or bundle of services were not tariffed under Option 1. If a customer of a service bundle tariffed under Option 1 failed to make a timely payment sufficient to cover the amount of the regulated charges, the carrier could follow the disconnection procedures contained in the MTSS.

¹¹ Id. at 142.

¹² *In the Matter of the Commission Ordered Investigation of the Existing Local Service Guidelines*, Case No. 99-998, et al, Third Entry on Rehearing (February 13, 2003) at 2.

¹³ Id.

¹⁴ Id., Appendix A at 2-3.

Under Option 2, ILECs and CLECs would tariff the entire service bundle service, including both regulated local services and unregulated services for a single combined packaged rate, including any amount attributable to the unregulated components. The carrier had to clearly identify the services within the package and denote which services are unregulated. If a customer failed to make a timely payment sufficient to cover the entire amount of the regulated and unregulated bundled packaged rate, the carrier could discontinue the provision of any services, other than basic service, if payment was sufficient to cover the carrier's tariffed rate for stand-alone basic service. A CLEC that did not offer stand-alone basic service was required to identify an amount in the tariff for the basic local exchange service component of the package. The identified amount could not exceed the packaged rate.

In the Commission's next review of the MTSS that began in 2006, the partial payment rule underwent considerable change. The PUCO staff proposed a partial payment rule that focused on the ability of a customer to retain at least basic service. The PUCO staff offered proposed rules 10(B) and 10(C), which stated:

(B) A local telecommunications provider may discontinue the provision of any regulated and unregulated service other than basic local exchange service, if basic local exchange service is offered as a stand-alone option and payment is sufficient to cover the rate of that service. For purposes of this rule, the rate for basic local exchange service shall be the tariffed rate.

(C) A customer who tenders a payment to a telecommunications provider offering basic local exchange service as a stand alone (independent) service option for an amount less than the total amount past due for all regulated and non-regulated charges shown on the bill and/or disconnection notice to which the payment applies, shall have their tendered payment allocated: first, to any applicable past due basic local exchange service charges, then to any applicable current basic local exchange service charges. After those areas are addressed the payment can be applied to any other

regulated and/or non-regulated charges shown on the bill and/or disconnection notice to which the payment applies.

The proposed rules, however, lacked protections for customers of bundled service, where the carrier did not offer stand-alone basic service. (Incumbent carriers are required to offer stand-alone basic service to consumers, whereas competitive LECs have the option to offer stand-alone basic service.) As the Consumer Groups, which included OCC, stated in their comments:

The proposed rule will have the effect of permitting local service providers to remove more people from the network – not for nonpayment of basic service, but for nonpayment for broadband service or toll service. Yet only customers who buy bundles will be at risk; customers who take service from multiple providers will be less at risk. It should be clear that the basic service of customers who have been talked into bundles is just as deserving of protection as a BLES-only customer's service.¹⁵

Notably, however, the OTA did not object to the staff proposal.¹⁶

In its 2007 Order, the Commission deleted proposed rule 10(C) and significantly modified proposed rule 10(B). Under the rule adopted by the Commission, residential customers, including those with service bundles, could retain at least basic service by paying their carrier's stand-alone basic service rate:

Basic local exchange service, when offered to residential and small business customers as a stand-alone service, may only be disconnected for the nonpayment of past due charges for that service. A local exchange carrier (LEC), when offering a service package of bundled regulated services and/or bundled regulated and unregulated services to residential and small business customers may, if basic local exchange service is included in the service package, discontinue for insufficient payment the provision of any regulated and/or unregulated service(s) other than basic local exchange service, if basic local exchange service is offered as a stand-alone option and payment is sufficient to cover the rate of that service. For purposes of this rule,

¹⁵ 05-1102, Consumer Groups Comments (September 8, 2006) at 80 (footnotes omitted).

¹⁶ 05-1102, OTA Comments (September 8, 2006), OTA Redline at 26.

the rate for basic local exchange service shall be the tariffed rate. If basic local exchange service is not offered by the LEC on a stand-alone basis, then insufficient payment may result in disconnection of the entire package.

The PUCO explained its intent in adopting this rule:

[I]t is our intent that if a LEC offers basic local exchange service to residential and small business customers as a stand-alone option, even if the customer is subscribed to and has become delinquent in paying for an optional service package that includes basic local exchange service, then the provider must maintain the customer's basic local exchange service so long as the payment tendered is sufficient to cover the rate for the stand-alone basic local service option. Under such circumstances, however, the LEC may nevertheless proceed to discontinue its provision of any other service(s) to which the delinquent customer is subscribed. On the other hand, if the LEC does not offer basic local exchange service as a stand-alone option, then nonpayment of delinquent charges may result in disconnection of the entire package.¹⁷

In the rehearing phase of the rulemaking proceeding, the telephone interests voiced little opposition to adopted Rule 10(B). AT&T Ohio sought elimination of Rule 10(B) based on its claim that the rule “cannot be applied and enforced in a competitively neutral manner...”¹⁸ OTA suggested only that, in addition to the carrier's tariffed rate for stand-alone basic service, customers be required to pay “all associated charges with basic local exchange service, including but not limited to taxes, USF charges, 911 charges, applicable zone charges, and the like” in order to retain basic service.¹⁹ Embarq

¹⁷ 2007 Order at 57.

¹⁸ 05-1102, AT&T Ohio Application for Rehearing (March 9, 2007) at 30; AT&T Ohio Memorandum Contra (March 19, 2007) at 9. Verizon made the same assertions regarding the MTSS in general, without specifically addressing Rule 10(B). See generally 05-1102, Verizon Application for Rehearing (March 9, 2007).

¹⁹ 05-1102, OTA Application for Rehearing (March 9, 2007) at 13.

called on the Commission to retain the partial payment allocation methodology found in Rule 17(C), although Embarq supported OTA's proposal as an alternative.²⁰

For their part, the Consumer Groups expressed qualified support for the rule. The Consumer Groups noted that although Rule 10(B) seemed to be a much clearer standard than Rule 17(C) for applying partial payments,²¹ Rule 10(B) lacked several consumer protections, and thus was inferior to Rule 17(C).²² First, the rule provided no protection for customers who have purchased bundles from telecommunications providers that do not offer stand-alone basic service. Thus, such providers would have been able to disconnect customers' local service for nonpayment of services other than basic service. Second, there was no prioritization for applying partial payments to services other than basic service. Thus, there was uncertainty regarding which services would be retained or disconnected should a customer pay more than the carrier's basic service, but less than the full amount owed.

On rehearing, the Commission added to Rule 10(B) the language regarding taxes and surcharges proposed by OTA, and added language in Rule 10(C) to provide that "if a customer is disconnected for nonpayment of BLES charges, the LEC may require the customer to pay the entire amount of all unpaid regulated charges, along with any applicable deposit and reconnection charges, prior to reconnecting service of any kind to the customer."²³ The Commission denied all other requests for rehearing of Rule

²⁰ 05-1102, Embarq Application for Rehearing (March 9, 2007) at 4-5. Cincinnati Bell, the only other telephone interest that filed an application for rehearing, did not address the Rule 10(B) issue.

²¹ 05-1102, Consumer Groups Memorandum Contra (March 19, 2007) at 21-22.

²² 05-1102, Consumer Groups Application for Rehearing (March 9, 2007) at 27-28.

²³ 2007 Rehearing Entry at 43.

10(B).²⁴ In adopting Rule 10(B) on rehearing, the Commission stated that its intent was “to create a payment allocation process that would permit residential and small business customers to avoid local service disconnection by availing themselves of stand-alone BLES, where it is offered, so long as the customer pays for that service alone, including ... any taxes and government mandated fees associated with that service.”²⁵

Thus, Rule 10(B) as adopted on rehearing was very similar to the version that OTA had proposed:

Basic local exchange service (BLES), when offered to residential and small business customers as a stand-alone service not part of a service package, cannot be disconnected for the nonpayment of past due charges if a customer’s payment is sufficient to cover the local exchange carrier’s (LEC) tariffed rate for stand-alone BLES service and all associated taxes and government-mandated surcharges (i.e., universal service fund and 9-1-1 service charges). BLES, when offered to residential and small business customers as part of a service package of bundled regulated services and/or bundled regulated and unregulated services, cannot be disconnected for nonpayment of past due charges when the LEC also offers BLES as a stand-alone option and the customer’s payment is sufficient to cover the LEC’s tariffed rate for stand-alone BLES and all associated taxes and government-mandated surcharges. In cases in which payment is only sufficient to cover the tariffed rate of stand-alone BLES and all associated taxes and government-mandated surcharges, the LEC may disconnect any regulated and/or unregulated service(s) other than BLES, not covered by the customer’s payment. If the LEC does not offer BLES on a stand-alone basis, then insufficient payment of the package price may result in disconnection of all services included in the package.²⁶

The Commission delayed the effective date of Rule 10(B) until June 1, 2008, in order to give carriers time to make any changes to their billing systems that were necessary in order to comply with the rule.²⁷

²⁴ Id. at 56.

²⁵ Id. at 43.

²⁶ Id., appendix at 24.

²⁷ 05-1102, Entry (September 26, 2008).

Despite its support for Rule 10(B) as adopted by the Commission, OTA sought a waiver of the rule on March 20, 2008. In its application for waiver, OTA asked the PUCO to grant a permanent waiver of Rule 10(B) for all of OTA's member local exchange companies. OTA asserted that the cost of compliance with Rule 10(B) is "prohibitive and unnecessary given the relatively few customers that would be impacted by the rule's disconnection changes."²⁸ OCC opposed OTA's waiver request because, among other things, OTA had not provided documentation to support a waiver for every one of its 43 member companies.²⁹ AT&T Ohio and its affiliated companies, as part of a reply to OCC's memorandum contra OTA's waiver request, sought their own company-specific waiver.³⁰ The Commission denied both waiver requests in the May 14 Entry, and affirmed the rule on rehearing in an Entry issued on July 9, 2008.

In the May 14 Entry, however, the Commission granted a "limited waiver" of Rule 10(B) regarding residential and small business customers whose stand-alone BLES accounts consist of two or three BLES lines. In granting the limited waiver, the Commission stated:

Some companies' current billing systems do not distinguish between primary lines and nonprimary lines for these accounts, instead treating the BLES lines the same as if they were a single line/account for purposes of BLES disconnection. **Because the Commission's focus is primarily on ensuring a dial tone connection and customers not losing that dial tone connection due to charges associated with other regulated and nonregulated services,** the Commission will allow delinquent residential and business multi-line accounts (up to three lines) to be treated on an account basis, just as they are today, for purposes of access line disconnection. The ILEC must continue to provide the stand-alone BLES portion of a delinquent customer's

²⁸ 05-1102, OTA Application for Waiver (March 20, 2008) at 4.

²⁹ 05-1102, OCC Memorandum Contra (April 7, 2008).

³⁰ 05-1102, AT&T's Reply (April 17, 2008) at 7. The AT&T companies were the only companies to seek a company-specific waiver.

BLES multi-line account, so long as the customer tenders payment sufficient to cover the ILEC's rate for each BLES line, plus taxes and government mandated fees associated with BLES. In this way, a company may continue, under the Service Termination Rule, to handle disconnections in the same way as it always has until now, on an account basis for the provision of the stand-alone BLES portion of the multi-line account. But, **consistent with the new rule, the ILEC would be required to treat disconnection of any other regulated local service(s) separately from the BLES portion of the multi-line account.**³¹

The Commission gave affected telephone companies until May 28, 2008 to seek waivers of this requirement.³²

AT&T Ohio – individually, without its affiliated companies – filed a waiver request on May 28 and filed a supporting affidavit on July 17, 2008. AT&T Ohio was the only telephone company to seek such a waiver. In its waiver request, AT&T Ohio argued that complying with either Rule 10(B) or the limited waiver was too costly.³³ AT&T Ohio asked that it be allowed to apply former Rule 17(C) in allocating partial payments.³⁴ OCC opposed the waiver request on June 16, 2008, and filed comments on the affidavit on July 21, 2008.

The Commission addressed AT&T Ohio's May 28 waiver request in the July 31 Entry. But rather than affirming the rule, as the Commission had repeatedly done since the rule was adopted in July 2007, the PUCO held the waiver request in abeyance. In so doing, the Commission stated that "AT&T has raised legitimate issues regarding competitive parity, given extensive and costly programming changes that would apply

³¹ May 14 Entry at 11 (emphasis added).

³² Id. at 12.

³³ See 05-1102, AT&T Ohio's Waiver Request (May 28, 2008) at 2-3.

³⁴ See id. at 2.

uniquely to it, and not to some of its competitors.”³⁵ Because of these competitive concerns, the Commission reopened consideration of Rule 10(B) “for the limited purpose of calling for comment on whether there are alternative means that would better balance the competing state policies found in Section 4927.02, Revised Code.”³⁶

The Commission also set out for comment the PUCO staff’s new proposal **to eliminate** the very Rule 10(B) that the Commission adopted in 2007 and upheld numerous times, the last being just 22 days before the July 31 Entry was issued. In addition to eliminating Rule 10(B), the PUCO staff proposes to amend rules 10(A) and 10(C), with rule 10(C) becoming 10(B). Under the PUCO staff’s proposal, rules 10(A) and 10(B) would read (PUCO staff proposed changes are indicated as small caps and strike-throughs):

- (A) Telecommunications providers shall disconnect customer service(s) only in accordance with this rule. Subject to the provisions of this rule, customers may be disconnected from a telecommunication provider’s service(s) for the nonpayment of past due charges. **SUBJECT TO THE PROVISIONS OF THIS RULE, WHERE TWO OR MORE SERVICES ARE OFFERED TOGETHER UNDER A PACKAGE PRICE, A FAILURE TO TIMELY PAY THE ENTIRE PACKAGE PRICE MAY RENDER AS PAST DUE THE CHARGES FOR ALL OF SERVICES INCLUDED IN THE PACKAGE AND, AS SUCH, MAY RESULT IN DISCONNECTION OF ALL SERVICES INCLUDED IN THE PACKAGE.**
- (B) If the customer is disconnected for nonpayment of ~~BLER~~ PAST DUE charges, the LEC may require the customer to pay the entire amount of all unpaid regulated charges, along with any applicable deposit and reconnection charges, prior to reconnecting service of any kind to the customer.³⁷

³⁵ July 31 Entry at 5.

³⁶ Id.

³⁷ Though not addressed in the July 31 Entry, the PUCO staff’s proposal apparently would make a nullity of Ohio Adm. Code 4901:1-5-10(F)(4), which requires disconnect notices to include “[t]he minimum dollar amount necessary to maintain basic local exchange service, if applicable,” and the portion of Ohio Adm. Code 4901:1-5-10(K) that requires telecommunications providers to “inform the customer of the amount to avoid disconnection and/or, if applicable, the amount to retain basic local exchange service, whenever discussing a pending disconnection with a customer.”

III. IN ADOPTING, AFFIRMING AND REAFFIRMING RULE 10(B), THE COMMISSION HAS ALREADY BALANCED THE VARIOUS STATE POLICIES IN R.C. 4927.02.

In comments, reply comments and applications for rehearing in the rulemaking proceeding, the ILECs argued, among other things, that they should be relieved of most, if not all, MTSS requirements because the requirements apply to them but not to other telecommunications providers. The Commission addressed these arguments in the 2007

Order:

Upon review of the record as a whole, the Commission does not believe it would be appropriate to eliminate the MTSS altogether or to have it apply only with regard to residential service. Having said that, we agree with the general premise that the standards we adopt should serve to establish, from a consumer protection standpoint, only those standards necessary to ensure minimum adequate service. We are sure that there are many consumer protection needs that can and reasonably should be addressed by competition. However, we are statutorily authorized to adopt reasonable standards of telephone service that will ensure that, regardless of market conditions, both residential and business consumers will be furnished adequate telephone service. Indeed, it is worth noting that the Ohio Legislature, which recently adopted legislation expanding the Commission's authority to deregulate telephone service where there is competition (H.B. 218), explicitly barred the Commission from exempting even competitive telecommunications services from the requirements of Sections 4905.231 and 4905.381, Revised Code, regarding adequate telephone service.³⁸

The Commission also dismissed the ILECs' arguments on rehearing:

None of the involved ILECs' rehearing arguments convince us that within the Order and the adopted rules: (a) we have failed to properly recognize and address current competitive marketplace realities; (b) we have acted unlawfully or unreasonably in adopting service standards that are intended and can reasonably be expected to ensure that, regardless of market conditions, the provision of telephone service to both residential and business customers in Ohio will be accomplished in a way that is at least minimally adequate; or (c) we

³⁸ 2007 Order at 5.

have acted unlawfully or unreasonably in adopting service standards that have application on services other than BLES.

Further, the Commission has stated that it adopted Rule 10(B) “in order to allow companies more flexibility in creating their own disconnection policies, consistent with the forces of the marketplace.”³⁹ Thus, contrary to the suggestion in the July 31 Entry, the Commission has already fully considered the competitive issues, and balanced them with the proper level of protection for consumers.

In addition, the argument that Rule 10(B) applies only to ILECs is misplaced. Indeed, at least eight CLECs have a tariffed stand-alone basic service rate,⁴⁰ and thus would be subject to Rule 10(B). Moreover, the rule itself does not specify ILECs. And the fact that ILECs, but not CLECs, are **required** to provide stand-alone basic service does not run afoul of either the state’s policy contained in R.C. 4927.02(A)(6) – that the PUCO consider the regulatory treatment of competing and functionally equivalent services in determining the scope of regulation of services – or in R.C. 4927.02(A)(7) – that the PUCO not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services.

The Commission has already, on numerous occasions in adopting, affirming and reaffirming Rule 10(B), balanced the competing state policies found in R.C. 4927.02. The Commission need do no more in that regard. Instead, the Commission now should focus on the directive for maintaining the MTSS found in R.C. 4905.231: “The public utilities commission may make such investigations as it deems necessary and ascertain and prescribe reasonable standards of telephone service. **Such standards shall be**

³⁹ May 14 Entry at 9.

⁴⁰ ACN Communication, Cavalier, Cincinnati Bell Extended Territories, CloseCall America, Insight Phone of Ohio, Matrix, Revolution (1-800-4-A-Phone) and Nexus/TSI.

minimum requirements for the furnishing of adequate telephone service.”

(Emphasis added.) The Commission should now determine what is best for the furnishing of adequate telephone service to Ohio’s consumers.

IV. ADOPTING THE PUCO STAFF PROPOSAL WOULD UNDERMINE THE RULEMAKING PROCESS AND UNDO AT LEAST TWENTY YEARS OF COMMISSION EFFORTS TO PROTECT CONSUMERS, INCLUDING LIFELINE CUSTOMERS.

The Commission has stated that “[t]he waiver process is not a substitute for the rulemaking process.”⁴¹ The PUCO staff proposal would render this Commission declaration meaningless. Rather than affirming rules that have been approved by the Commission and JCARR, and repeatedly upheld on rehearing, the PUCO staff proposal capitulates to the telephone industry’s repeated assaults on Rule 10(B) through the waiver process. The PUCO staff proposal also has the effect of granting the blanket waiver of Rule 10(B) requested by OTA that the Commission denied in the May 14 Entry and the July 9 Entry on Rehearing, without any supporting documentation from the companies.

The major flaw in the PUCO staff’s proposal is that it does not differentiate between regulated and unregulated services. Thus, under the PUCO staff’s proposal, a customer who has been sold a service bundle that includes regulated telephone service as well as nonregulated services (e.g., broadband, cable television) would lose telephone service for nonpayment of the entire package price. This would undo at least 20 years of Commission efforts to ensure that consumers cannot lose their local telephone service for nonpayment of nonregulated services. The proposal would also allow disconnection of

⁴¹ May 14 Entry at 9.

local service for non-payment of toll charges, again contrary to years of Commission directives.

The PUCO has stated that customers of service bundles that include basic service are basic service customers by definition.⁴² R.C. 4927.02(A)(1) provides that it is state policy to “[e]nsure the availability of adequate basic local exchange service to citizens throughout the state....” Thus, for customers of service bundles, the Commission should “prescribe reasonable standards of telephone service” that are the “minimum requirements for the furnishing of adequate telephone service.”⁴³ These requirements should also include adequate consumer protections.

Under Commission rules, service bundles that include basic service are Tier 2 services for regulatory purposes.⁴⁴ Customers of service bundles that include basic service already are subject to rate increases, changes in terms and conditions of service, or withdrawal of their service bundle with only a 15-day notice.⁴⁵ The PUCO staff’s proposal would strip away the last vestige of consumer protections available to customers of service bundles.

⁴² *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, Entry on Rehearing (February 13, 2008) at 16, citing *In the Matter 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, Opinion and Order (March 7, 2006) at 25.

⁴³ R.C. 4905.231.

⁴⁴ Ohio Adm. Code 4901:1-6-05(D)(1).

⁴⁵ Ohio Adm. Code 4901:1-6-05(C); Ohio Adm. Code 4901:1-6-05(E)(2); Ohio Adm. Code 4901:1-6-16(D).

In addition, the PUCO staff's proposal would make it more difficult for Lifeline customers who subscribe to service bundles to maintain telephone service.⁴⁶ In granting AT&T Ohio the ability to sell service bundles to Lifeline customers on a trial basis, the Commission stated its concern that "lifeline customers enrolling in packages will lose pricing protections afforded in alternative regulation, since packages are priced at market-based rates and can be increased at the company's discretion on 15-day's notice to customers."⁴⁷ Under the PUCO staff's proposal, Lifeline customers who subscribe to bundled service would be required to pay the price of the entire bundle, rather than the LEC's stand-alone basic service rate, in order to maintain telephone service.

The Commission must preserve the ability of customers of service bundles – especially Lifeline customers – to remain connected to the network. The Commission should reject the PUCO staff's proposal.

V. THE COMMISSION SHOULD RETAIN RULE 10(B), WITH POSSIBLE IMPROVEMENTS THAT HELP PROTECT CONSUMERS OF SERVICE BUNDLES.

Rule 10(B) furthers the PUCO's longstanding policy of helping customers stay connected to telephone service. The Commission should retain Rule 10(B) as adopted in the rulemaking proceeding.

If, however, the Commission wants to ensure that Rule 10(B) applies more equally to ILECs **and** CLECs, the Commission should reject the PUCO staff proposal

⁴⁶ Currently, only AT&T Ohio Lifeline customers are permitted to subscribe to bundles. *In the Matter of the Application of AT&T Ohio for Approval of an Alternative Form of Regulation*, Case No. 02-3069-TP-ALT Entry (April 25, 2007) ("AT&T Lifeline Waiver Entry"). AT&T Ohio may sell service bundles to Lifeline customers only on a trial basis. *Id.* at 4. Embarq has, however, recently applied for authority to offer bundles to its Lifeline customers. See Case No. 00-1532-TP-COI, Embarq Application for Waiver (July 28, 2008). OCC filed in opposition to Embarq's waiver application on August 15, 2008.

⁴⁷ AT&T Lifeline Waiver Entry at 2-3.

and amend Rule 10(B) to protect consumers of service bundles. In that regard, OCC suggests the following changes to Rule 10(B):

Basic local exchange service (BLES), when offered to residential and small business customers as a stand-alone service not part of a service package, cannot be disconnected for the nonpayment of past due charges if a customer's payment is sufficient to cover the local exchange carrier's (LEC) tariffed rate for stand-alone BLES service and all associated taxes and government-mandated surcharges (i.e., universal service fund and 9-1-1 service charges). BLES, when offered to residential and small business customers as part of a service package of bundled regulated services and/or bundled regulated and unregulated services, cannot be disconnected for nonpayment of past due charges when ~~the LEC also offers BLES as a stand-alone option and~~ the customer's payment is sufficient to cover the LEC's tariffed rate for stand-alone BLES and all associated taxes and government-mandated surcharges. IF THE LEC DOES NOT HAVE A TARIFFED STAND-ALONE BLES RATE, THEN BLES CANNOT BE DISCONNECTED FOR NONPAYMENT OF PAST DUE CHARGES WHEN THE CUSTOMER'S PAYMENT IS SUFFICIENT TO COVER THE LEC'S LOWEST TARIFFED RATE FOR A SERVICE PACKAGE AND ALL ASSOCIATED TAXES AND GOVERNMENT-MANDATED SURCHARGES. In cases in which payment is only sufficient to cover the tariffed rate of stand-alone BLES, OR THE LEC'S LOWEST TARIFFED RATE FOR A SERVICE PACKAGE IF THE LEC DOES NOT HAVE A TARRIFFED STAND-ALONE BLES RATE, and all associated taxes and government-mandated surcharges, the LEC may disconnect any regulated and/or unregulated service(s) other than BLES, not covered by the customer's payment. ~~If the LEC does not offer BLES on a stand-alone basis, then insufficient payment of the package price may result in disconnection of all services included in the package.~~

VI. CONCLUSION

In the rulemaking proceeding that concluded just 13 months ago, the Commission appropriately balanced the competing state policies of R.C. 4927.02 in adopting Rule 10(B). The Commission need not conduct such an exercise again so soon after adopting and twice reaffirming the rule.

In addition, the PUCO staff's proposal does nothing to protect Ohio consumers who subscribe to service bundles. The PUCO staff's proposal, in fact, runs counter to the

Commission's long-held goal of ensuring that residential consumers have a means to retain at least basic service.

The Commission should reject the PUCO staff's proposal. The Commission should also retain Rule 10(B), either as adopted in the 2007 Rehearing Entry or as recommended by OCC.

Respectfully submitted,

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