

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

October 17, 2008

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² Because of a clerical error, OCC was not served a copy of the Application until September 2, 2008. The procedural timelines were adjusted accordingly by an Entry dated October 10, 2008 (“Entry”) at 2.

residential basic service rates by up to \$1.25 and its monthly basic Caller ID rates by up to 50 cents every year,³ in 24 exchanges.⁴ Verizon's residential basic service rates in the 24 exchanges range from \$21.68 per month to \$26.73 per month (including the non-bypassable subscriber line charge and the intrastate access fee), depending on the rate band and zone. Verizon charges \$7.00 for basic Caller ID. Thus, Verizon seeks the opportunity to increase the basic service rate that consumers in those exchanges pay by 4.68% to 5.77%, and the basic Caller ID rate by 7.14%. The 24 exchanges contain, in total, approximately 195,000 Verizon residential access lines.⁵

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential telephone customers,⁶ files this Opposition to the Application. OCC's Opposition is supported by the affidavits of Kathy L. Hagans ("Hagans Affidavit") and Karen J. Hardie ("Hardie Affidavit"). Based on the requirements of the statute, the Commission's rules and the information in the Application, the discussion herein shows good cause why the Application should not be granted pursuant to R.C. 4927.03(A)(1), (2) and (3).⁷ OCC requests that the Commission deny the Application, at least for the specific exchanges discussed herein.

³ Ohio Adm. Code 4901:1-4-11(A).

⁴ Ashland, Athens, Bowling Green, Brunswick, Cambridge, Chesapeake, Circleville, Delaware, Englewood, Jackson, Marion, Medina, Montrose, New Philadelphia, Norwalk, Plain City, Port Clinton, Portsmouth, Sylvania, Tipp City, Trotwood, Troy, Wadsworth and Wilmington.

⁵ See Verizon's 2007 Annual Report filed with the PUCO, Schedule 28.

⁶ OCC filed a Motion to Intervene in this proceeding that was granted by the Entry (at 2). OCC files this Opposition pursuant to Ohio Adm. Code 4901:1-4-09(F).

⁷ OCC appealed the first two basic service alt. reg. cases, involving Cincinnati Bell Telephone Company (Case No. 06-1002-TP-BLS) and AT&T Ohio (Case No. 06-1013-TP-BLS ("06-1013")). As the Commission is aware, on March 6, 2008, the Ohio Supreme Court upheld the Commission's basic service alt. reg. rules and its decisions in those two cases. *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 301, 2008-Ohio-861; *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 117 Ohio St.3d 289, 2008-Ohio-860.

II. THE LAW AND THE COMMISSION'S IMPLEMENTATION OF THE LAW

In 2005, the General Assembly passed H.B. 218, which amended R.C.

4927.03(A)(1) to allow alt. reg. for basic service. The statute now reads:

The public utilities commission ... may, by order, exempt any such telephone company or companies, as to any public telecommunications service, including basic local exchange service, from any provision of Chapter 4905. or 4909., or sections 4931.01 to 4931.35 of the Revised Code or any rule or order adopted or issued under those provisions, or establish alternative regulatory requirements to apply to such public telecommunications service and company or companies; **provided the commission finds that any such measure is in the public interest and either of the following conditions exists:**

- (a) The telephone company or companies are subject to competition with respect to such public telecommunications service;
- (b) The customers of such public telecommunications service have reasonably available alternatives.

(Emphasis added.) The General Assembly imposed a specific additional condition on basic service alt. reg. in R.C. 4927.03(A)(3):

To authorize an exemption or establish alternative regulatory requirements under division (A)(1) of this section with respect to basic local exchange service, the commission additionally shall find that **there are no barriers to entry.**

(Emphasis added.)

In H.B. 218, the General Assembly did not alter the specific factors that the Commission is required to consider in granting alt. reg., found in R.C. 4927.03(A)(2):

- (2) In determining whether the conditions in division (A)(1)(a) or (b) of this section exist, factors the commission **shall** consider include, but are not limited to:
 - (a) The number and size of alternative providers of services;
 - (b) The extent to which services are available from alternative providers in the relevant market;

(c) **The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions;**

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(Emphasis added.) The General Assembly did, however, amend the state policy which the Commission must consider⁸ in implementing R.C. 4927.03(A):

It is the policy of this state to:

(1) Ensure the availability of adequate basic local exchange service to citizens throughout the state;

(2) Rely on market forces, **where they are present and capable of supporting a healthy and sustainable, competitive telecommunications market**, to maintain just and reasonable rates, rentals, tolls, and charges for public telecommunications service;....⁹

R.C. 4927.03(A) requires the Commission to find that alt. reg. is in the public interest before it may approve an application. Unless consumers have real competitive alternatives at prices comparable to Verizon's basic service,¹⁰ granting this application cannot possibly be in the public interest.

In implementing H.B. 218, the PUCO determined that an ILEC could satisfy the R.C. 4927.03(A) requirements for an exchange by meeting any one of four "competitive tests," or through the ILEC's own alternative market test.¹¹ Here, Verizon relies on Ohio Adm. Code 4901:1-4-10(C)(4) ("Test 4") for all 44 exchanges. Test 4 provides:

⁸ R.C. 4927.02(B).

⁹ R.C. 4927.02(A) (emphasis added).

¹⁰ Bundles of services are Tier 2 services. See Ohio Adm. Code 4901:1-6-05(D)(1). Under Ohio Adm. Code 4901:1-4-05(C)(4), Tier 2 services have unrestrained pricing flexibility. Verizon was granted this elective alt. reg. authority in 2006 in Case No. 06-700-TP-ALT. Based on its tariff filings, Verizon has taken considerable advantage of its pricing freedom through elective alt. reg.

¹¹ Ohio Adm. Code 4901:1-4-10(C).

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.¹²

Thus, the applicant – in this proceeding, Verizon – has the burden of proof.

Regarding facilities-based providers, the focus should be on whether the providers compete with Verizon's Tier 1 core services. Otherwise, customers of Verizon's Tier 1 core services would either have to pay more for their Verizon service, or pay more for another provider's service, or possibly do without telephone service. In any event, the public interest would not be served.

III. SUMMARY OF VERIZON'S APPLICATION

Verizon claims that 25 carriers should be recognized as alternative providers, in various combinations, in the 24 exchanges. In the Application, Verizon named as alternative providers eight wireline carriers – AT&T, Cincinnati Bell ("CBT"), dPi Teleconnect, First Communications, Heritage Telephone Company ("Heritage"), Level 3 Communications ("Level 3"), Ohio Telecom and TDS Telecom – five cable companies (treated here as "wireline" carriers) – Armstrong Telecom ("Armstrong"), Buckeye Cable ("Buckeye"), Insight, Suddenlink and Time Warner Cable ("Time Warner") – and twelve wireless companies – AT&T Wireless, Boost Mobile Wireless ("Boost Mobile"), Cincinnati Bell Wireless, Cleveland Unlimited Wireless ("Cleveland Unlimited"), Cricket Wireless ("Cricket"), Jump Mobile Wireless ("Jump Mobile"), nTelos Wireless ("nTelos"), OPEX Communications ("OPEX"), Revol Wireless ("Revol"), Sprint

¹² Ohio Adm. Code 4901:1-4-10(C)(4).

Wireless (“Sprint”), T-Mobile and TracFone Wireless (“TracFone”). The following table shows the distribution of these providers and the asserted residential line loss that

Verizon claims for each exchange:

Exchange	Residential Line Loss	Providers Alleged by Verizon to Be Serving the Exchange (Number of Providers)
Ashland	49.6%	Level 3, Armstrong, Buckeye, Time Warner, AT&T Wireless, Sprint, T-Mobile (7)
Athens	52.1%	Level 3, OPEX, Time Warner, AT&T Wireless, Sprint, T-Mobile (6)
Bowling Green	55.7%	Level 3, Buckeye, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (7)
Brunswick	19.8%	Level 3, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (6)
Cambridge	24.2%	AT&T, Level 3, Suddenlink, Time Warner, AT&T Wireless, Sprint, T-Mobile (7)
Chesapeake	42.3%	AT&T, Armstrong, AT&T Wireless, Sprint, TracFone (5)
Circleville	29.6%	Level 3, Time Warner, AT&T Wireless, Boost Mobile, Sprint, T-Mobile (6)
Delaware	45.6%	Level 3, Insight, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (7)
Englewood	43.6%	dPi Teleconnect, Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Cricket, Jump Mobile, Sprint, T-Mobile (9)
Jackson	18.1%	AT&T, Level 3, TDS Telecom, Time Warner, AT&T Wireless, Sprint (6)
Marion	34.0%	Heritage, Level 3, Time Warner, AT&T Wireless, Sprint, T-Mobile (6)
Medina	43.5%	Level 3, Armstrong, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (7)
Montrose	26.4%	AT&T, First Communications, Level 3, Time Warner, AT&T Wireless, Sprint, T-Mobile (7)
New Philadelphia	23.8%	Level 3, Time Warner, AT&T Wireless, Boost Mobile, Sprint, T-Mobile (6)
Norwalk	35.3%	AT&T, Level 3, Ohio Telecom, Buckeye, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (9)
Plain City	29.2%	Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Revol, Sprint, T-Mobile (7)
Port Clinton	29.0%	Level 3, Ohio Telecom, Buckeye, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (8)
Portsmouth	41.0%	dPi Teleconnect, Level 3, Time Warner, AT&T Wireless, nTelos, Sprint (6)

Exchange	Residential Line Loss	Providers Alleged by Verizon to Be Serving the Exchange (Number of Providers)
Sylvania	32.2%	Level 3, Buckeye, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (7)
Tipp City	47.5%	Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Cleveland Unlimited, Cricket, Sprint, T-Mobile (8)
Trotwood	42.2%	CBT, Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Cleveland Unlimited, Cricket, Sprint, T-Mobile (9)
Troy	50.0%	Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Cricket, Revol, Sprint, T-Mobile (8)
Wadsworth	31.8%	Level 3, Time Warner, AT&T Wireless, Revol, Sprint, T-Mobile (6)
Wilmington	37.5%	Level 3, Time Warner, AT&T Wireless, Cincinnati Bell Wireless, Cleveland Unlimited, Cricket, Sprint (7)

As discussed below, however, Verizon's documentation is inadequate for the Commission to grant the Application. Verizon has not shown that AT&T, Buckeye or Level 3 serves the residential market. In addition, dPi Teleconnect, Heritage, Suddenlink and many of the wireless carriers do not meet the Commission's criteria for alternative providers in several exchanges. Thus, in considering the Application, the Commission should reject these carriers as alternative providers for Test 4 purposes. Further, affiliated companies (i.e., AT&T and AT&T Wireless, Boost Mobile and Sprint, CBT and Cincinnati Bell Wireless, Cricket and Jump Mobile) that Verizon has listed as alternative providers in the same exchange should be counted as one provider, if the Commission does not reject them altogether.

In this Opposition and the attached affidavits, OCC shows that Verizon has failed to meet Test 4 in 22 of the 24 exchanges: Ashland, Athens, Bowling Green, Brunswick, Cambridge, Chesapeake, Circleville, Delaware, Englewood, Jackson, Marion, Medina, Montrose, New Philadelphia, Plain City, Port Clinton, Portsmouth, Sylvania, Trotwood,

Troy, Wadsworth and Wilmington. The Commission should deny Verizon the ability to raise residential customers' basic service rates in these exchanges.

IV. VERIZON HAS FAILED TO MEET ITS BURDEN OF PROOF IN 22 OF THE 24 EXCHANGES, AND THUS THE COMMISSION SHOULD NOT ALLOW VERIZON TO RAISE RESIDENTIAL CUSTOMERS' BASIC SERVICE RATES IN THE 22 EXCHANGES

Test 4 requires applicants to show that alleged alternative providers are “present” in the exchange. The Commission has recognized that wireless carriers are “present” in the exchange if the applicant shows that the carrier has ported residential numbers.¹³ For wireline carriers, “presence” is shown through residential white pages listings, residential 9-1-1 listings or ported residential numbers.¹⁴ Wireline carriers must also have a residential tariff that shows they are serving residential customers.¹⁵

Verizon's documentation in support of its Application does not meet these standards. Verizon relies on the use of ported numbers and NXX assignments to qualify its alleged alternative providers in the 24 exchanges. The NXX information, however, shows only that exchange prefixes have been assigned to the various carriers. They do not show whether any of the carriers are actually serving residential customers in the exchanges. Verizon's documentation on whether providers are “facilities-based” is also lacking. Further, as discussed below, for many of the carriers named in Verizon's

¹³ See, e.g., *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a 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. 07-1732-TP-BLS, Opinion and Order (May 14, 2008) (“07-1312 Order”) at 25.

¹⁴ Id. at 22.

¹⁵ See *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, Opinion and Order (June 27, 2007) at 28; 06-1013, Opinion and Order (December 20, 2006) at 29.

Application, the supporting documentation fails to show that the carriers are present and/or serving the residential market in nearly all of the exchanges.

A. The Wireline Carriers.

1. Armstrong Cable

Verizon identified Armstrong as a provider serving residential customers in the Ashland, Chesapeake, and Medina exchanges. Ms. Hagans notes that although Armstrong appears to provide cable service in the three exchanges, Verizon has not shown a “presence” regarding telephone service, through white page listings or ported numbers, in the three exchanges.¹⁶ Thus, the Commission should reject Armstrong as an alternative provider for Test 4 purposes in the Ashland, Chesapeake and Medina exchanges.

2. AT&T

Verizon named AT&T, as a facilities-based alternative provider of residential service in the Cambridge, Chesapeake, Jackson, Montrose, and Norwalk exchanges. As Ms. Hagans notes, however, AT&T does not have a tariff for local exchange service for residential customers; it has only a business tariff.¹⁷ The Commission has repeatedly stated that, in order for a wireline carrier to qualify as an alternative provider for basic service alt. reg. purposes, the carrier must have a residential tariff.¹⁸ AT&T does not have a residential tariff, and thus does not qualify as an “alternative provider serving the residential market” under Test 4.

¹⁶ Hagans Affidavit, ¶ 14.

¹⁷ Id., ¶ 15.

¹⁸ See footnote 15, *supra*.

In addition, Verizon does not distinguish between AT&T and AT&T Wireless in identifying carriers that have ported numbers in these exchanges.¹⁹ Thus, as Ms. Hagans points out, “it is impossible to definitively determine that the ported number information refers to AT&T the wireline CLEC.”²⁰ Verizon’s documentation does not support AT&T as an alternative provider of residential service in any exchange, and thus the Commission should reject AT&T as an alternative provider.²¹

Disqualifying AT&T as an alternative provider would result in Verizon’s Application being denied for the Cambridge exchange. Verizon claimed only five alternative providers, including AT&T, in the Cambridge exchange.

3. Buckeye

Verizon named Buckeye as a facilities-based provider of residential services in the Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania exchanges. Ms. Hagans’ review of cable coverage maps, however, shows that Buckeye does not provide cable service in the Ashland, Bowling Green, Norwalk and Port Clinton exchanges.²² In addition, Verizon did not show that Buckeye has either ported numbers or white page listings for any of the five exchanges.²³ Thus, the Commission should reject Buckeye as an alternative provider for Test 4 purposes in all five exchanges.

¹⁹ Id.

²⁰ Id.

²¹ As discussed in Section IV.C., below, if the Commission does not, for some reason, reject AT&T as an alternative provider, the Commission should consider AT&T and AT&T Wireless to be a single alternative provider in the five exchanges for which Verizon lists both as alternative providers.

²² Id., ¶ 17.

²³ Id.

4. Cincinnati Bell

Verizon has identified Cincinnati Bell (the CLEC affiliate of the ILEC Cincinnati Bell) as an alternative provider serving residential customers in the Trotwood exchange. Ms. Hagans found, however, that Verizon did not show that Cincinnati Bell has any residential white page listings or ported numbers in the Trotwood exchange.²⁴ Thus, Verizon did not show that Cincinnati Bell is an alternative provider for Test 4 purposes in the Trotwood exchange, and the Commission should reject Cincinnati Bell as an alternative provider in the Trotwood exchange.

5. dPi Teleconnect

Verizon asserts that dPi Teleconnect is a facilities-based alternative provider serving residential customers in the Englewood and Portsmouth exchanges. Ms. Hagans notes, however, that Verizon failed to show any white page listings or ported numbers for dPi Teleconnect in these exchanges, and that dPi Teleconnect's tariff and interconnection agreements on file with the Commission are applicable only in AT&T Ohio's service territory.²⁵ The Commission thus should reject dPi Teleconnect as an alternative provider for Test 4 purposes in the Englewood and Portsmouth exchanges.

6. First Communications

Verizon alleges that First Communications is a facilities-based provider serving residential customers in the Montrose exchange. Ms. Hagans, however, states that Verizon offered no white page listings or ported numbers for First Communications in the Montrose exchange, and could not verify that First Communications is a facilities-

²⁴ Id., ¶ 18.

²⁵ Id., ¶ 19.

based alternative provider.²⁶ The Commission should therefore reject First Communications as an alternative provider for Test 4 purposes in the Montrose exchange.

7. Heritage Telephone Company

Verizon claims that Heritage is an alternative provider serving residential customers in the Marion exchange. Ms. Hagans notes, however, that Heritage's tariff on file with the Commission shows that Heritage does not provide service in the Marion exchange.²⁷ In addition, Verizon did not show that Heritage has ported numbers or white page listings in the Marion exchange.²⁸ The Commission should reject Heritage as an alternative provider for Test 4 purposes in the Marion exchange.

8. Level 3 Communications

Verizon identified Level 3 as an unaffiliated facilities-based alternative provider serving the residential market in 23 of the 24 exchanges. The Commission, however, has recognized that Level 3 is a provider of business and wholesale services, not residential local services.²⁹ Nevertheless, in the 07-760 Order the Commission found that:

the record demonstrates that Level 3's information in various Embarq databases represents the existence of residential customers of a retail VoIP-based provider(s) that utilizes Level 3 as a wholesale provider of "VoIP Enhanced local service" to obtain and/or port residential phone numbers from Embarq, White Pages

²⁶ Id., ¶ 20.

²⁷ Id., ¶ 21.

²⁸ Id.

²⁹ *In the Matter of the Application of United Telephone Company of Ohio d/b/a Embarq for Approval of an Alternative Form of Regulation of Basic Local Exchange Service and Other Tier 1 Services Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 07-760-TP-BLS, Opinion and Order (December 19, 2007) ("07-760 Order") at 26.

listings in Embarq's directory and listings in Embarq's E9-1-1 database.³⁰

The Commission based this determination on statements contained on Level 3's website that VoIP customers using Level 3's wholesale service called VoIP Enhanced Local must own their own switches.³¹

Ms. Hagans notes, however, that "Level 3 also provides a wholesale, voice service called Switched One Plus which is available to non-facilities-based resellers," which does not require a VoIP provider to have its own switch.³² Thus, in order to qualify Level 3 as an alternative provider for Test 4 purposes based on the 07-760 decision, Verizon would have to show that a VoIP provider is using Level 3's VoIP Enhanced Local service rather than its Switched One Plus service, which does not require the VoIP provider to have its own switch. For the Commission to make this determination, Verizon would need to provide the identity of the VoIP provider.

Verizon has not provided such information in its Application. Indeed, as Ms. Hagans notes, in discovery OCC asked Verizon to identify each VoIP provider assumed to be providing service to residential customers.³³ Verizon responded that it "does not know the identity of the underlying VoIP provider(s) to which Level 3 ports residential numbers."³⁴

³⁰ Id.

³¹ Id.

³² Hagans Affidavit, ¶ 24, citing <http://www.level3.com/index.cfm?pageID=105> (accessed October 8, 2008).

³³ Id., ¶ 23.

³⁴ Id., citing Verizon response to OCC Interrogatory No. 111.

Verizon, which has the burden of proof in this proceeding, has not shown that Level 3 should qualify as an alternative provider for Test 4 purposes.³⁵ The Commission should reject Level 3 as an alternative provider.

9. Suddenlink

Verizon claims that Suddenlink is an alternative provider serving residential customers in the Cambridge exchange. Ms. Hagans found, however, that “Verizon provides no information in its Application showing white page listings or ported numbers in order to demonstrate Suddenlink serves residential customers in the Cambridge exchange.”³⁶ The Commission should thus reject Suddenlink an alternative provider in the Cambridge exchange.

10. TDS Telecom

Verizon alleges that TDS is a facilities-based provider serving residential customers in the Jackson exchange. Ms. Hagans found, however, that the certificate that Verizon relied upon as the basis for TDS’s operation in the Jackson exchange was cancelled in 2005.³⁷ Further, Ms. Hagans states that “Verizon has included no information in its Application showing TDS Telecom is facilities-based or that it provides service to residential customers in the Jackson exchange through data showing white page listings or ported numbers.”³⁸ The Commission should thus reject TDS as an alternative provider for Test 4 purposes in the Jackson exchange.

³⁵ See, e.g., *In the Matter of the Application of The Ohio Bell Telephone Company d/b/a 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, Opinion and Order (May 14, 2008) at 28.

³⁶ Id., ¶ 27.

³⁷ Id., ¶ 28.

³⁸ Id.

11. Time Warner Cable

Verizon identified Time Warner as a provider serving residential customers in all exchanges except the Chesapeake exchange. Ms. Hagans found, however, that Time Warner does not serve the Brunswick, Cambridge, Jackson, Port Clinton, or Sylvania exchanges.³⁹ In addition, Ms. Hagans notes that “Verizon has not demonstrated in any of the exchanges in which Time Warner Cable is identified that it actually has residential customers through white page listings or ported numbers.”⁴⁰ The Commission should thus reject Time Warner as an alternative provider for Test 4 purposes.

B. The Wireless carriers.

In her affidavit, Ms. Hardie examines the wireless carriers named as alternative providers in Verizon’s Application. Ms. Hardie notes that at least two providers (OPEX and TracFone) are not facilities-based carriers, and that Verizon cannot confirm that several wireless carriers have ported numbers in various exchanges.

Ms. Hardie found that OPEX relies on a company named Total Call Mobile to provide service.⁴¹ Total Call Mobile, in turn, does not use its own facilities, but instead apparently resells Sprint’s service.⁴² OPEX thus is not facilities-based and does not qualify as an alternative provider for Test 4 purposes.

Ms. Hardie also notes that the Federal Communications Commission recognizes TracFone as a “non-facilities-based commercial mobile radio service (CMRS) provider

³⁹ Id., ¶ 29.

⁴⁰ Id.

⁴¹ Hardie Affidavit, ¶ 9.

⁴² Id.

that offers prepaid wireless telecommunications services.”⁴³ Thus, the PUCO should reject TracFone as an alternative provider for Test 4 purposes.

In addition, Ms. Hardie shows that Verizon cannot confirm that a number of the wireless carriers have ported numbers in some exchanges. Ported numbers have been the only way that the Commission has accepted for basic service alt. reg. applicants to show that wireless carriers serve residential customers in an exchange.⁴⁴ The Commission should reject the following carriers that Verizon listed as alternative providers in the corresponding exchanges, because there is no confirmation of number porting: Boost in the Circleville and New Philadelphia exchanges; Cincinnati Bell Wireless in the Plain City and Trotwood exchanges; Cleveland Unlimited in the Tipp City, Trotwood and Wilmington exchanges; Cricket in the Englewood, Tipp City, Trotwood, Troy and Wilmington exchanges; Jump in the Englewood exchange; nTelos in the Portsmouth exchange; OPEX in the Athens exchange; Revol in the Bowling Green, Delaware, Plain City, Port Clinton and Troy exchanges; T-Mobile in the Ashland, Cambridge, Englewood and Port Clinton exchanges; and TracFone in the Chesapeake exchange.⁴⁵

C. If Not Rejected Outright by the Commission, Carriers That Are Affiliated with Each Other and That Verizon Named as Alternative Providers in the Same Exchange Should Be Counted as One Alternative Provider.

Verizon listed carriers that are affiliated with each other as separate alleged alternative providers in several exchanges. AT&T and AT&T Wireless are affiliated

⁴³ Id., ¶ 10, citing *In the Matter of TracFone Wireless, Inc.’s Petitions for Designation as an Eligible Telecommunications Carrier*, CC Docket No. 96-45, Order, DA 07-4982 (released April 11, 2008), ¶ 7.

⁴⁴ See 07-1312 Order at 25.

⁴⁵ See Hardie Affidavit, Attachment KJH-1.

with each other,⁴⁶ and are both named in five exchanges: Cambridge, Chesapeake,⁴⁷ Jackson, Montrose and Norwalk. Sprint Wireless and its prepaid affiliate, Boost Mobile,⁴⁸ are both named in the Circleville and New Philadelphia exchanges. Verizon also identified both CBT and Cincinnati Bell Wireless in the Trotwood exchange,⁴⁹ and Cricket and its affiliate Jump Mobile in the Englewood exchange.⁵⁰

As discussed above, these carriers should individually be rejected as alternative providers for Test 4 purposes. If the Commission does not disqualify any of these pairs of affiliated companies as alternative providers, however, the Commission should consider each pair as a single alternative provider for Test 4 purposes in those exchanges where they both are listed. Counting affiliated carriers as separate alternative providers in an exchange thwarts the statutory requirement in R.C. 4927.03(A)(3) that the applicant must show that there are no barriers to entry for basic service in the market, since the “barriers” apparently would have been overcome by one company that, for whatever reason, is providing service through two subsidiaries. Just as an incumbent is not allowed to count, for example, its wireless affiliate as an alternative provider under Test 4, an alternative provider should not count twice for its own wireless and wireline operations. Likewise, two wireless affiliates should not count as two wireless providers.

⁴⁶ Id. ¶ 28.

⁴⁷ Because Verizon named just five alternative providers – the minimum needed to meet Test 4 – in the Chesapeake exchange, if the Commission were to view AT&T and AT&T Wireless as one provider, which it should, Verizon would not meet Test 4 in the Chesapeake exchange.

⁴⁸ See id., ¶¶ 17-18.

⁴⁹ Id., ¶¶ 31.

⁵⁰ Id., ¶¶ 22-24.

In that regard, counting AT&T and AT&T Wireless as separate alternative providers would run counter to the Commission’s determination that the presence of five alternative providers in an exchange helps to “present[] sufficient evidence that competitors for BLES are able to enter the market and compete with the ILEC in that market.”⁵¹ The Commission would also subject Verizon’s residential customers to rate increases, even though the requisite number of choices of providers for service would not be available to them.

D. The Results.

If the Commission follows OCC’s recommendations as detailed above, 22 of the 24 exchanges named in Verizon’s Application would not qualify for basic service alt. reg. under Test 4. The results are set forth in the following table:⁵²

Exchange Name	Number of Alleged Alternative Providers	Alleged Alternative Providers that Do Not Qualify Under Test 4 in the Exchange	Number of Remaining Alternative Providers
Ashland	7	Armstrong, Buckeye, Level 3, T-Mobile, Time Warner	2
Athens	6	Level 3, OPEX, Time Warner Cable	3
Bowling Green	7	Buckeye, Level 3, Revol, Time Warner	3
Brunswick	6	Level 3, Time Warner Cable	4
Cambridge	7	AT&T, Level 3, Suddenlink, T-Mobile, Time Warner	2
Chesapeake	5	Armstrong Cable, AT&T, TracFone	2
Circleville	6	Boost, Level 3, Time Warner	3

⁵¹ *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 22.

⁵² See Hagans Affidavit, ¶ 31, Table 1.

Exchange Name	Number of Alleged Alternative Providers	Alleged Alternative Providers that Do Not Qualify Under Test 4 in the Exchange	Number of Remaining Alternative Providers
Delaware	7	Level 3, Revol, Time Warner	4
Englewood	9	Cricket, dPi Teleconnect, Jump, Level 3, T-Mobile, Time Warner	3
Jackson	6	AT&T, Level 3, TDS, Time Warner	2
Marion	6	Heritage, Level 3, Time Warner	3
Medina	7	Armstrong, Level 3, Time Warner	4
Montrose	7	AT&T, First Communications, Level 3, Time Warner	3
New Philadelphia	6	Boost, Level 3, Time Warner	3
Plain City	7	Cincinnati Bell, Level 3, Revol, Time Warner	3
Port Clinton	8	Buckeye, Level 3, Revol, T-Mobile, Time Warner	3
Portsmouth	6	dPi Teleconnect, Level 3, nTelos, Time Warner	2
Sylvania	7	Buckeye, Level 3, Time Warner	4
Trotwood	9	Cincinnati Bell, Cincinnati Bell Wireless, Cleveland Unlimited, Cricket, Level 3, Time Warner	3
Troy	8	Cricket, Level 3, Revol, Time Warner	4
Wadsworth	6	Level 3, Time Warner	4
Wilmington	7	Cleveland Unlimited, Cricket, Level 3, Time Warner	3

V. CONCLUSION

Allowing Verizon to raise the rates charged to basic service customers in exchanges that do not include the requisite level of competition is not in the public interest. Verizon's application for basic service alt. reg. should thus be denied, to give customers the protection intended in R.C. 4927.02(A)(2) for "just and reasonable" rates.

At the very least, the Commission should follow OCC's recommendations and reject the alternative providers as discussed herein, and deny the Application for the Ashland, Athens, Bowling Green, Brunswick, Cambridge, Chesapeake, Circleville, Delaware, Englewood, Jackson, Marion, Medina, Montrose, New Philadelphia, Plain City, Port Clinton, Portsmouth, Sylvania, Trotwood, Troy, Wadsworth and Wilmington exchanges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Opposition to Verizon's Application for Basic Local Exchange Service Alternative Regulation and Demonstration Why the Application Should Not Be Granted by the Office of the Ohio Consumers' Counsel* was provided to the persons listed below electronically and via first class U.S. Mail, postage prepaid, this 17th day of October 2008.

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Summary: Comments Opposition to Verizon's Application for Basic Local Service Alternative Regulation and Demonstration Why the Application Should Not Be Granted by the Office of the Ohio Consumers' Counsel; along with the affidavits of Kathy L. Hagans and Karen J. Hardie electronically filed by Mrs. Mary V. Edwards on behalf of Bergmann, David C. and Office of the Ohio Consumers' Counsel