

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) Section 4927.03(A)(1), Revised Code, authorizes 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 of BLES, 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.
- (2) On March 7, 2006, the Commission, pursuant to Case No. 05-1305-TP-ORD (05-1305-TP-ORD), *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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(3) Rule 4901:1-4-01(C), O.A.C., defines BLES as:

end 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:

- (a) Local dial tone service.
- (b) Touch tone dialing service.
- (c) Access to and usage of 9-1-1 services, where such services are available.
- (d) Access to operator services and directory assistance.
- (e) Provision of a telephone directory and listing in that directory.
- (f) Per call, caller identification blocking services.
- (g) Access to telecommunications relay service.
- (h) 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 originating 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.

(4) On August 29, 2008, Verizon North Inc. (Verizon) filed a BLES alternative regulation application pursuant to Section 4927.03, Revised Code, and Rule 4901:1-4-09, O.A.C., for the following

24 exchanges: 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. Verizon contends that it meets the criteria set forth in competitive market Test 4 (Rule 4901:1-4-10(C)(4), O.A.C.). Test 4 provides as follows:

An applicant must demonstrate that in each requested telephone exchange area that at least 15 percent 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.

- (5) Verizon 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, Verizon states that its application includes the forms, affidavits, supporting information, detailed analysis, proposed tariff revisions, and the proposed legal notice required by the rules.
- (6) Summarizing the exhibits that accompany its application, Verizon states that Exhibit 1 purports to show that Verizon is in compliance with its elective alternative regulation commitments. Exhibit 1 contains the affidavit of Mr. Michael T. Colquitt, Vice President of Verizon. 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.

Exhibit 3 identifies the telephone exchange areas for which Verizon seeks alternative regulation for BLES and other Tier 1 services. Moreover, the exhibit purports to present supporting information and detailed analysis to prove that Verizon meets

competitive market Test 4, pursuant to Rule 4901:1-4-10(C)(4), O.A.C., for each of the exchanges.

In demonstrating its compliance with the competitive market tests, Verizon 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, Verizon reviewed information from the Local Exchange Routing Guide (LERG) and internal data from network records and ported telephone number information.

Exhibit 4 contains Verizon's proposed tariff modifications. Part A of the exhibit contains the existing tariff pages. Part B shows the modifications necessary to implement the pricing flexibility rules permitted by Rule 4901:1-4-11(A), O.A.C.

Exhibit 5 contains Verizon's proposed legal notice that notifies the public of the filing of its application. The notice states that objections to the application can be filed with the Commission. Consistent with the rule, the application states that Verizon will publish 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.

- (7) Overall, Verizon proclaims that it has complied with all aspects of the Commission's rules pertaining to an application for BLES alternative regulation. Under Section 4927.03, Revised Code, 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 Verizon's BLES is subject to competition or that the company's customers have reasonably available alternatives, and that there are no barriers to entry with respect to BLES in those exchanges. Verizon urges the Commission to grant its application on an automatic basis in accordance with the applicable rule.
- (8) On September 2, 2008, Verizon filed a letter noting that it had inadvertently neglected to serve a copy of its application on the OCC. To remedy the delay in service, Verizon requested that its application be deemed filed on September 2, 2008, and that

all timelines be adjusted accordingly. On October 10, 2008, the attorney examiner granted Verizon's request.

- (9) On September 4, 2008, the office of the Ohio Consumers' Counsel (OCC) timely filed a motion to intervene. By entry issued October 10, 2008, the attorney examiner granted OCC's motion to intervene.
- (10) 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 45 calendar days after the application is docketed. On October 17, 2008, OCC filed a pleading opposing Verizon's application.
- (11) In opposing Verizon's application, OCC seeks to prevent Verizon's request to increase its monthly rates for residential basic service by up to \$1.25 and its rates for Caller ID service by up to 50 cents each year in the 24 Ohio exchanges identified in Verizon's application (OCC Opposition at 1-2). OCC calculates that Verizon intends to increase basic service rates by 4.68 percent to 5.77 percent and the rate for basic Caller ID by 7.14 percent.

OCC states that Rule 4927.03(A), O.A.C., requires that the Commission find that alternative regulation is in the public interest before approving an application. If there are no real competitive alternatives at prices comparable to Verizon's basic service, OCC concludes that granting an application cannot be in the public interest. To evaluate whether there is competition, OCC states, that an ILEC may satisfy any one of four competitive tests or through the ILEC's own alternative market test. In this application, Verizon relies on Test 4 set forth in Rule 4901:1-4-10(C)(4), O.A.C., for all 24 requested exchanges. OCC contends that the Commission should assure that facilities-based providers compete with Verizon's Tier 1 core services. Otherwise, according to OCC, customers of Verizon's Tier 1 core services would either have to pay more for Verizon's service, more for a competitor's service, or do without service. In any case, OCC concludes that the public interest would not be served by such an outcome (OCC Opposition 4-5).

OCC notes that Verizon claims that 25 carriers should be recognized as alternative providers in the 24 exchanges. In Verizon's application, OCC counts eight wireline carriers, five cable companies, and 12 wireless carriers (OCC Opposition at 5). For several reasons, OCC asserts that the documentation supporting Verizon's application is inadequate to grant the application. Surveying the carriers enumerated in Verizon's application, OCC finds that Verizon has failed to show that AT&T, Buckeye Cable, and Level 3 Communications (Level 3) serve the residential market. Some carriers, according to OCC, do not meet the Commission's criteria for alternative providers in some of the exchanges. OCC would also have the Commission count as one provider those carriers that are affiliated if it does not reject them altogether. Finally, with the exception of the Norwalk and Trotwood exchanges, OCC finds that Verizon has failed to meet Test 4 in the remaining 22 exchanges.

OCC argues that Verizon fails to meet the standard of Test 4 for lack of establishing that carriers have a presence in the exchange. According to OCC, presence can be established for wireless carriers by showing that a carrier has ported residential telephone numbers. Wireline carriers, OCC continues, can show presence by White Pages listings, residential 911 listings, or ported residential telephone numbers. For wireline carriers, a residential tariff that shows service to residential customers also shows presence. Overall, OCC challenges whether Verizon's documentation supports the claim that the listed carriers are present and serve the residential market in the listed exchanges.

Noting that Verizon relies on the use of ported numbers and NXX assignments to qualify alternative providers in the 24 exchanges, OCC questions the reliability of such information. OCC claims that NXX information can only show that exchange prefixes have been assigned to various carriers. NXX information, OCC argues, does not show whether carriers actually serve residential customers. In addition, OCC describes as "lacking" Verizon's documentation on whether providers are facilities-based.

- (12) Relying on Test 4 criteria and the documentation provided by Verizon on wireline carriers, OCC identifies the reasons why

the following wireline carriers fail to meet Test 4 in some of the exchanges: Armstrong Cable, AT&T, Buckeye Cable, Cincinnati Bell Extended Territories LLC (CBET), dPi Teleconnect, First Communications, Heritage Telephone Company, Level 3 Communications, Suddenlink, TDS Telecom, and TWC Cable. In addition to the Test 4 criteria, OCC claims that the cable companies, Armstrong Cable and Buckeye Cable, do not provide service in some of the exchanges listed by Verizon.

- (13) With respect to wireless carriers, OCC finds that two carriers, OPEX and TracFone, are not facilities-based carriers. For several other wireless carriers, OCC claims that Verizon cannot confirm that they have ported numbers in various exchanges. For these reasons, OCC urges the Commission to reject certain wireless carriers as alternative providers.
- (14) On October 27, 2008, Verizon filed a memorandum in response to OCC's pleading. Verizon condenses OCC's issues to whether Verizon's application demonstrates the presence of at least five unaffiliated, facilities-based, alternative providers serving the residential market. The purpose of Verizon's memorandum is to refute OCC's claims regarding the criteria to establish presence of a given alternative provider in an exchange and to respond to OCC's opposition to counting affiliated competitors in the same exchange as separate alternative providers. Contrary to OCC's assertions, Verizon is confident that it has established the presence of at least five alternative providers in the listed exchanges.

With its memorandum, Verizon also filed a supplement to its application and, in the alternative, a motion for leave to supplement its application. In the supplement filing, Verizon states that information contained in this supplement augments the information supplied in the application.

- (15) On October 29, 2008, OCC filed a motion for an extension of time to file a reply to Verizon's memorandum. By entry issued November 4, 2008, the attorney examiner extended OCC's time to file a reply until November 7, 2008. OCC filed a reply on November 7, 2008, in which it contests Verizon's filing of supplemental material.

OCC urges the Commission to deny Verizon's motion to supplement its application. OCC argues that the material provided by Verizon in its supplement should have been submitted with its application or should have been submitted with a motion long before OCC filed its opposition. Noting inconsistencies in the evidence contained in the application and the supplement and Verizon's statement that the application and supplement should be considered together, OCC is uncertain as to Verizon's position with respect to the inconsistencies.

Turning to the substance of Verizon's motion, OCC notes that Verizon only lists four alternative providers for the Chesapeake Exchange. Because four alternative providers would not comply with Test 4, OCC urges the Commission to deny Verizon's application for the Chesapeake Exchange.

- (16) On November 14, 2008, Verizon filed a reply in support of its motion for leave to supplement its application. Verizon does not believe that a motion is needed to supplement its application, but filed the motion in the event that the Commission may deem it necessary. Verizon emphasizes that it provides only additional support for its application. Verizon would not categorize its information as a "material modification" pursuant to Rule 4901:1-4-09(J), O.A.C. Even if regarded otherwise, Verizon submits that only a brief modification of time would be necessary. Verizon underscores its argument by referring to two other cases where the Commission has allowed a party to supplement its application.¹

Verizon rejects any claim that OCC was prejudiced by Verizon's filing. OCC's reply, Verizon argues, demonstrates that OCC had both the time and opportunity to respond to Verizon's supplement. Moreover, OCC sought and was granted additional time to file a response.

- (17) The Commission does not restrict ILECs as to how or what data/evidence may be used to demonstrate compliance with

¹ *In the Matter of the Application of AT&T Ohio*, Case No. 06-1013-TP-BLS (Entry issued September 21, 2006) and *In the Matter of the Application of United Telephone Company dba Embarq*, Case No. 07-760-TP-BLS (Entry issued September 27, 2007).

competitive test criteria in a given exchange.² However, Rules 4901:1-4-09(B)(3) and 4901:1-4-10(A), O.A.C., impose upon the applicant the burden of demonstrating that as of the date of the application, it meets at least one of the competitive market tests in each of the exchange areas by providing the supporting information and detailed analysis in the exhibits of its application.

With respect to the first prong of competitive market Test 4, we find that Verizon demonstrated that, as of December 31, 2007, it lost at least 15 percent of its access lines since 2002 as reflected in its annual report filed with the Commission in 2003, reflecting data for 2002, in all exchanges included in its application as outlined in Attachments A and B.

- (18) Verizon's motion to supplement its application should be granted. There is no provision in the rules that would bar a party from supplementing its application. To the contrary, as pointed out by Verizon in its November 14, 2008, reply, Rule 4901:1-4-09(J), O.A.C., contemplates filings subsequent to the initial application. Moreover, it would not be in the interest of administrative efficiency to allow OCC to file objections citing deficiencies in the application and then bar an applicant from attempting to cure those deficiencies. By allowing Verizon to supplement its application, limited to the issues raised by OCC, the Commission may be fully informed as to the merits of the application and thereby render a decision that is consistent with the rules.
- (19) Next, we evaluate Verizon's application and evidence with respect to the second prong of Test 4. At the outset we note that Verizon supplemented its application to state that it no longer relies on dPi Teleconnect, TDS Telecom, or TracFone to support its application, and, therefore, the Commission did not evaluate these carriers' eligibility to meet Test 4 criteria. Based on the exclusion of TracFone from the list of alternative providers in this application, Verizon's application reflects only four claimed non-affiliated, facilities-based alternative service providers in the Chesapeake Exchange. Accordingly, Verizon

² *In the Matter of the Application of AT&T Ohio for Alternative Regulation of Basic Local Exchange Service*, Case No. 07-1312-TP-BLS (Opinion and Order issued May 14, 2008, at 25); and *In the Matter of the Application of AT&T Ohio for Alternative Regulation of Basic Local Exchange Service*, Case No. 08-107-TP-BLS (Opinion and Order issued June 25, 2008, at 20).

no longer meets the criteria of the second prong of Test 4 for the Chesapeake Exchange.

- (20) OCC contests Verizon's assertion that Armstrong Cable is a provider serving residential customers in the Ashland, Chesapeake, and Medina exchanges. OCC does not contest that Armstrong Cable provides cable service in the exchanges but claims that Verizon has failed to show through White Pages listings or ported numbers that the company has a presence in the relevant exchanges. For this reason, OCC urges the Commission to reject Armstrong Cable as an alternative provider.

For its response, Verizon states that ported numbers and White Pages listings are not the only way to prove presence in an exchange. Verizon states that it verified Armstrong Cable's presence in the three exchanges by data available from the company's website. By entering zip code or address information into the website tool, it showed that local residential service is available in Ashland, Chesapeake, and Medina exchanges. Moreover, Verizon relies upon the local exchange routing guide (LERG), which showed that Armstrong Cable has NPA-NXX number blocks assigned to it and ported numbers in these exchanges. Furthermore, Verizon states that Armstrong Cable's tariff shows that it provides residential service in each of the three exchanges. Notwithstanding OCC's claim, Verizon states that it has verified that Armstrong Cable has White Pages listings in the three exchanges.

In its reply memorandum filed November 7, 2008, OCC did not contest Verizon's claim that Armstrong Cable qualifies as an alternative provider in the Ashland, Chesapeake, and Medina exchanges.

The record demonstrates that Armstrong Cable is a facilities-based, alternative provider that uses its own facilities to offer residential service in the Ashland, Chesapeake, and Medina exchanges. Verizon submitted evidence demonstrating that, in the three listed exchanges, Armstrong Cable offers tariffed residential telephone service, ported telephone numbers, provides residential White Pages listings in Verizon's directory and advertizes residential telephone service availability on its

website.³ Accordingly, based on the evidence, the Commission will consider Armstrong Cable as a facilities-based, alternative service provider in the Ashland, Chesapeake, and Medina exchanges for the purpose of satisfying Test 4 criteria.

- (21) OCC rejects Verizon's reliance on AT&T as a facilities-based provider of service in the Cambridge, Chesapeake, Jackson, Montrose, and Norwalk exchanges. OCC claims that AT&T has only a business tariff, not a residential local exchange tariff.

Verizon claims that it has verified through Internet research that AT&T offers residential service in the Cambridge, Chesapeake, Jackson, Montrose, and Norwalk exchanges.⁴ The LERG also confirmed that AT&T has NPA-NXX number blocks assigned to it and has ported numbers in these exchanges. Verizon rejects OCC's claim that it cannot distinguish AT&T from AT&T Wireless because it is common knowledge that Cingular now uses the name AT&T Wireless. Moreover, Verizon refers to its Exhibit 3D that shows that Cingular Wireless has ported numbers in the Cambridge, Chesapeake, Jackson, Montrose, and Norwalk exchanges. To reject OCC's claim that AT&T does not offer residential service, Verizon refers to AT&T's Product Guide that shows that it has a residential service offering.

OCC is not persuaded by Verizon's statements. Consulting AT&T's website, OCC did not find a "Product Guide." OCC can only find that residential service is available from the AT&T ILEC. AT&T's competitive local exchange carrier (CLEC) tariff only includes business services. OCC further claims that Verizon has not substantiated that AT&T has White Pages listings or that the AT&T CLEC has ported numbers in the subject exchanges. OCC, therefore, maintains its position that the Commission should reject AT&T as a facilities-based, alternative provider of residential service.

With respect to AT&T, we find that the record demonstrates that AT&T is a facilities-based, alternative provider that uses its own facilities to offer residential service in the Cambridge,

³ Verizon Application Exhibit 3, 3C, and 3D; Verizon response to Staff Data Request, question 7; and Verizon Supplemental filing, Attachment A.

⁴ Verizon correction filed November 3, 2008.

Montrose, and Norwalk exchanges. Verizon submitted evidence that AT&T offers residential telephone service in the Cambridge, Montrose, and Norwalk exchanges; ported telephone numbers in Cambridge, Montrose, and Norwalk exchanges; and advertizes residential telephone service availability on its website in the Cambridge, Montrose, and Norwalk exchanges.⁵ Upon examination of AT&T's tariff, we find that AT&T does not provide local service in the Jackson Exchange. Accordingly, based on the evidence on the record, the Commission will consider AT&T as a facilities-based, alternative service provider in the Cambridge, Montrose, and Norwalk exchanges for the purpose of satisfying Test 4.

- (22) OCC rejects Verizon's reliance on Buckeye Cable as a facilities-based provider of service in the Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania exchanges. OCC's review of cable coverage maps shows that Buckeye Cable does not provide cable service in Ashland, Bowling Green, Norwalk, and Port Clinton exchanges. In addition, OCC declares that Verizon did not show that Buckeye Cable has ported numbers or White Pages listings in any of the five exchanges.

By website research, Verizon verified that Buckeye Cable offers residential local service in the subject exchanges. Moreover, Verizon points out that the website contains a "key city" listing that shows the exchanges and cities where Buckeye offers local service. To substantiate its claim further, Verizon relies upon the LERG showing that Buckeye Telesystem has NPA-NXX number blocks assigned to it in the Bowling Green and Sylvania exchanges, ported residential numbers in the Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania exchanges, and a tariff showing that Buckeye provides local service in the five exchanges.

In its reply, OCC alleges that Verizon's documentation does not support its claims. On its examination of Verizon's documentation, OCC found that the list of key cities only described the local calling area. OCC is uncertain from the information whether residential service is available in the exchanges. Finally, OCC claims that the tariff referenced by Verizon is a business-only tariff.

⁵ Verizon Application Exhibit 3, 3C, and 3D; and Verizon response to Staff Data Request, question 2.

Rejecting OCC's conclusion that Buckeye Cable does not provide residential service, Verizon states in its November 14, 2008, reply that Buckeye Cable uses Buckeye Telesystem to provision the voice part of its services. In its response to staff's interrogatory #7, Verizon provided a product information guide that shows that Buckeye Cable offers residential phone service. Because the residential service may be digital, like most voice over Internet protocol (VoIP) services, Verizon speculates that the service may not be tariffed. Verizon adds that Buckeye Cable has ported numbers in the following exchanges: Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania. Verizon believes it should be entitled to the representations in Buckeye Cable's product guide, which shows that Buckeye Cable provides residential service and is present in the listed Verizon exchanges.

With respect to Buckeye Telesystem, the Commission notes that the record reflects that Buckeye Telesystem is a provider of wholesale services to another retail, residential service provider, not a provider of residential services. The Commission notes that Verizon submitted data showing that Buckeye Telesystem is a facilities-based provider.⁶ Analyzing the data submitted by Verizon regarding Buckeye Telesystem, we find the following:

- (a) Verizon's reference to Buckeye Telesystem's tariffs shows that telephone service is offered in the Bowling Green and Sylvania exchanges only, not in the Ashland, Norwalk, or Port Clinton exchanges;
- (b) Buckeye Telesystem has ported telephone numbers in the Ashland, Bowling Green, Norwalk, Port Clinton, and Sylvania exchanges;
- (c) Buckeye Telesystem is assigned telephone number blocks in the LERG only in the Bowling Green and Sylvania exchanges;⁷

⁶ Verizon response to Staff Data Request, question 1 and Verizon Application, Exhibit 3C.

⁷ Verizon Application, Exhibit 3C and 3D.

- (d) Verizon states that it verified that ported phone numbers in Port Clinton and Sylvania exchanges are residential numbers;⁸ and
- (e) Verizon submitted evidence of residential White Pages listings for Buckeye Telesystem in the Sylvania Exchange only.

Although Buckeye Telesystem is not the retail, residential local service provider, the record reflects that Buckeye Cable is the retail, VoIP-based residential service provider that utilizes Buckeye Telesystem's wholesale services.⁹ An examination of Buckeye Cable's website demonstrates that it offers residential phone service, but it does not provide any information about where such residential telephone service is available for subscription. Buckeye Cable's website only offers information regarding the expanded local calling area coverage of its telephone service. Verizon did not provide any information supporting its allegation of the residential services availability in the individual exchanges where it claims Buckeye Cable is an alternative service provider. Therefore, based on the evidence submitted by Verizon, the Commission finds that Verizon failed to submit evidence to demonstrate that Buckeye Telesystem/Buckeye Cable, in fact, has residential local exchange service available and that it is serving residential customers in the Ashland and Norwalk exchanges. Accordingly, based on the evidence, the Commission will consider Buckeye Cable as the facilities-based, alternative service provider that, in partnership with Buckeye Telesystem, provide residential service in only the Bowling Green, Port Clinton, and Sylvania exchanges for the purpose of satisfying Test 4.

- (23) OCC contests Verizon's reliance upon CBET (the CLEC affiliate of the ILEC Cincinnati Bell) as an alternative provider of residential service in the Trotwood Exchange. OCC concludes that CBET should be rejected as an alternative provider because Verizon did not show that CBET has residential White Pages listings or ported numbers in the Trotwood Exchange.

⁸ Verizon Reply in Support for Supplemental filing (November 14, 2008) at 7.

⁹ Verizon response to Staff Data Request, question 7.

Noting that White Pages listings and ported numbers are not the only ways to show presence, Verizon states that it verified CBET's presence in the Trotwood Exchange by website research. In addition, Verizon found that the LERG shows that CBET has NPA-NXX number blocks assigned to it in the Trotwood Exchange. Moreover, Verizon relies on CBET's tariff that indicates that CBET provides residential service in the Trotwood Exchange.

In its reply memorandum filed November 7, 2008, OCC did not further contest Verizon's reliance upon CBET as an alternative provider of residential service.

With respect to CBET, the record demonstrates that CBET is a facilities-based, alternative provider, using its own facilities to offer residential service in the Trotwood Exchange. Verizon submitted evidence that CBET is assigned telephone number blocks, offers tariffed residential telephone service, provides residential White Pages listings in Verizon's directory, and advertizes residential telephone service availability on its website.¹⁰ Accordingly, based on the evidence, the Commission will consider CBET as a facilities-based, alternative service provider in the Trotwood Exchange for the purpose of satisfying Test 4.

- (24) OCC contests Verizon's reliance upon First Communications as a facilities-based, alternative provider of residential service in the Montrose Exchange. OCC claims that First Communications should be rejected because Verizon did not provide White Pages listings or ported numbers. In addition, OCC could not verify that First Communications is a facilities-based carrier. Overall, OCC concludes that First Communications does not meet the criteria of Test 4.

In response, Verizon verified that First Communications offers service in the Montrose Exchange via website research. Upon entering zip code or address information, Verizon verified that First Communications provides residential local service in the Montrose Exchange. Verizon confirmed through First

¹⁰ Verizon Application Exhibit 3 and 3C; Verizon response to Staff Data Request, question 2; and Verizon Supplemental filing.

Communications' website that it claims to be a "leading facilities-based telecommunications provider."

OCC is doubtful concerning the information from First Communications' website. According to OCC, the website shows that First Communications' service is available only in AT&T's service territory. As for being a facilities-based carrier, OCC retorts that First Communications' claim of being a "leading facilities-based telecommunications provider" has no specific relevance to the Montrose Exchange. OCC also claims that Verizon provided no information indicating whether First Communications has White Pages listings for the Montrose Exchange. Lacking these specific criteria, OCC believes that First Communications should be rejected as an alternative provider in the Montrose Exchange.

We reject Verizon's claim that First Communications is a facilities-based, alternative provider offering residential service in the Montrose Exchange. The Commission finds that Verizon failed to submit any evidence to demonstrate that First Communications is a facilities-based provider that, in fact, serves residential customers in the Montrose Exchange. Accordingly, First Communications will not be considered as a facilities-based, alternative service provider serving a residential market for the purpose of satisfying Test 4 criteria in the Montrose Exchange.

- (25) Reviewing Heritage's tariff, OCC disputes Verizon's claim that Heritage provides residential service in the Marion Exchange. OCC adds that Verizon did not show that Heritage has ported numbers or White Pages listings in the Marion Exchange. OCC, therefore, concludes that Heritage does not qualify as an alternative provider in the Marion Exchange.

In support of its claim that Heritage is an alternative provider, Verizon relies on the website data that is available from Heritage. Verizon points out that Heritage provides VoIP service in the Marion Exchange.

Reviewing Verizon's response, OCC asserts that Verizon has not provided information relating to ported numbers or White Pages listings. Additionally, OCC points out that Verizon has not refuted OCC's claim that Heritage's tariff does not include

the Marion Exchange in its service territory. Consulting the website information alluded to by Verizon, OCC states that it could not confirm that Heritage provides service in the Marion Exchange. Arguing that Verizon has provided insufficient proof, OCC requests that the Commission reject Heritage as an alternative provider of residential local service.

Verizon did not respond to OCC's claim that the website information did not disclose that Heritage is a facilities-based, alternative provider of residential service in the Marion Exchange.

We reject Verizon's claim that Heritage is a facilities-based, alternative provider offering residential service in the Marion Exchange. The Commission finds that Verizon failed to submit any evidence to demonstrate that Heritage is a facilities-based provider that, in fact, serves residential customers in the Marion Exchange. Accordingly, Heritage will not be considered as a facilities-based, alternative service provider serving residential market for the purpose of satisfying Test 4 criteria in the Marion Exchange.

- (26) In the Delaware Exchange, Verizon relies upon Insight Phone of Ohio, LLC (Insight) as one of the alternative providers in the exchange. In its application, Verizon states that Insight provides telephone service in the Delaware Exchange pursuant to Case No. 05-837-TP-ACE and Certificate No. 90-9294 and that Insight's tariff shows that it has authority to provide service in the Delaware Exchange. To substantiate that Insight is an alternative provider of BLES in the Delaware Exchange, Verizon included a website snapshot to show that service is available in the Delaware Exchange. In addition, Verizon provided a LERG copy to show that Insight has been assigned NPA/NXX number blocks for the Delaware Exchange. Verizon also included an exhibit that shows that Insight has ported telephone numbers in the Delaware Exchange.

With respect to Insight, we find that the record reflects that Insight offers tariffed residential telephone service and that Insight has NPA/NXX number blocks, ported residential telephone numbers, and advertizes residential service

availability on its website¹¹ in the Delaware Exchange. Accordingly, the Commission will consider Insight as a facilities-based, alternative service provider for the purpose of satisfying Test 4 requirements in the Delaware Exchange.

- (27) OCC rejects the claim that Level 3 Communications (Level 3) is present in Verizon's exchanges. OCC notes that the Commission has recognized that Level 3 provides business and wholesale services, not residential local services. Relying on the Commission's findings in Embarq's BLES order (Case No. 07-760-TP-BLS),¹² OCC states that VoIP providers can purchase wholesale services from Level 3. OCC points out that Level 3 offers two wholesale services to VoIP customers. The first is called VoIP Enhanced Local. The other is called Switched One Plus service. To use VoIP Enhanced Local, a provider must own its switches. Switched One Plus is available to non-facilities-based resellers. Because of this distinction, OCC reasons that Verizon must identify the VoIP provider to verify that the provider has its own switch. Through discovery, OCC learned that Verizon could not identify Level 3's underlying VoIP providers to which it ports residential numbers. Because of its inability to qualify Level 3 as an alternative provider, OCC urges the Commission to reject Level 3 under Test 4.

With the exception of the Chesapeake Exchange, Verizon states that it verified by website research that Level 3 offers residential service in 23 of the 24 identified exchanges. By entering zip code or address information, Verizon confirmed that Level 3 offers residential service in each exchange. In addition, Verizon states that the LERG shows that Level 3 has NPA-NXX number blocks assigned to it in all exchanges except the Chesapeake Exchange. Verizon also finds that Level 3 is porting numbers in all identified exchanges, except the Chesapeake Exchange. Conceding that Level 3 canceled its tariff in July 2008, Verizon points out that Level 3 does have a detariffed product guide that explains VoIP offerings in Verizon exchanges. For additional proof, Verizon reports that Level 3 has White Pages listings in various exchanges.

¹¹ Verizon Application Exhibit 3, 3C, and 3D; Verizon response to Staff Data Request, question 7; and Verizon Supplemental filing, Attachment A.

¹² *In the Matter of the Application of United Telephone Company of Ohio dba Embarq for Alternative Regulation of Basic Local Exchange Service*, Case No. 07-760-TP-BLS (Opinion and Order issued December 19, 2007).

Notwithstanding Verizon's support of Level 3 as an alternative provider, OCC maintains its objection to Level 3. In its review of the Level 3 website screenshots in Verizon's application, OCC found that the screen shots are for Level 3's wholesale service, not its retail service. Furthermore, contrary to Verizon's claims, OCC contends that the website does not allow the input of zip codes to check the availability of service. Finding that Verizon has not presented sufficient documentation to support Level 3 as an alternative provider, OCC urges the Commission to reject Level 3 as an alternative provider.

In its November 14, 2008, reply, Verizon confirms that Level 3 is present in 23 of the 24 (excluding the Chesapeake Exchange) exchanges requested. Verizon enumerates that Level 3 has residential ported numbers from Verizon, has LERG numbers assigned to it, has its own network, and has White Pages listings. Verizon, in addition, places reliance on the Commission's findings in Case No. 07-760-TP-BLS.¹³

We find that Verizon has met its burden by providing sufficient evidence that Level 3 is an alternative provider in the listed exchanges. The record reflects, as supported by Level 3's tariff and website statements, that Level 3 is a facilities-based provider of business and wholesale services to other carriers,¹⁴ not a provider of residential services. However, we find evidence submitted by Verizon that demonstrates the nature of Level 3's activity in all of the exchanges where Level 3 was identified by Verizon as an alternative provider. The Commission notes that Verizon submitted data showing that Level 3 is assigned telephone number blocks, has White Pages listings in Verizon's directory, and/or has ported residential telephone numbers in the exchanges where Level 3 was identified by Verizon as an alternative provider.¹⁵ We find that these data demonstrate that Level 3's information in different Verizon databases reflect residential customers of a retail, VoIP-based provider that utilizes one or more of Level 3's wholesale services to obtain and/or port residential phone numbers from Verizon. Although Level 3 is not the retail,

¹³ Opinion and Order issued December 19, 2007, at 26.

¹⁴ Verizon Application, Exhibit 3 and Verizon Memo Contra at 8.

¹⁵ Verizon Application, Exhibit 3C and 3D and Verizon Supplement to its Application.

residential local service provider, the data demonstrate the presence of, at least,¹⁶ one VoIP-based retail residential service provider that utilizes Level 3's wholesale services in all exchanges where Level 3 was identified by Verizon as an alternative provider.

OCC claims that, because Level 3 offers a wholesale service that is called "Switched One Plus" to non-facilities-based resellers, it is not possible to determine whether the VoIP provider is actually "facilities-based" without identifying the VoIP provider. We reject OCC's claim as we rejected the identical claim in prior cases.¹⁷ Accordingly, as a conservative approach, the Commission will consider one facilities-based, alternative service provider that is in partnership with Level 3 as a provider of residential service in the relevant exchanges for the purpose of satisfying Test 4.

- (28) OCC contests Verizon's claim that Suddenlink is an alternative provider that serves residential customers in the Cambridge Exchange. OCC reports that Verizon did not include information in its application showing that Suddenlink provides White Pages listings or ports numbers to show that Suddenlink serves residential customers in the Cambridge Exchange. For these reasons, OCC urges the Commission to reject Suddenlink as an alternative provider in the Cambridge Exchange.

Verizon, in response, states that White Pages listings or ported numbers are not the only means to show presence in an exchange. Verizon admits that Suddenlink is a carrier that does not provide White Pages listings or ports numbers. In substitution, Verizon supplied website data that show that Suddenlink is a residential service provider in the Cambridge Exchange.

In its reply, OCC reiterates that Verizon did not present data to show that Suddenlink provides White Pages listing or receives ported numbers in the Cambridge Exchange.

¹⁶ The evidence on the record does not reveal how many facilities-based, VoIP residential service providers are utilizing Level 3's wholesale services in the various exchanges.

¹⁷ *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. 08-1041-TP-BLS, Opinion and Order issued December 17, 2007).

In its November 14, 2008, reply, Verizon maintains that Suddenlink is present in the Cambridge Exchange. According to Verizon, it provided information in its initial filing showing that Suddenlink provides residential telephone service in the Cambridge Exchange. In response to a staff interrogatory, Verizon states that Suddenlink's website shows that it serves the Cambridge Exchange. In response to another staff interrogatory, Verizon states that it provided evidence to show that Suddenlink is a facilities-based provider.

As to Verizon's claim that Suddenlink provides telephone service in the Cambridge Exchange, the information provided by Verizon demonstrates that Suddenlink is a facilities-based provider and advertizes on its website residential telephone service availability in the Cambridge Exchange.¹⁸ However, the Commission finds that Verizon failed to submit any evidence to demonstrate that Suddenlink is in fact serving residential customers in the Cambridge Exchange. Accordingly, Suddenlink will not be considered as a facilities-based, alternative service provider serving the residential market for the purpose of satisfying Test 4 requirements in the Cambridge Exchange.

- (29) In its application, Verizon reported that Time Warner Cable (TWC) serves all exchanges except the Chesapeake Exchange. Upon investigation, OCC found that TWC does not serve the Brunswick, Cambridge, Jackson, Port Clinton, or Sylvania exchanges. Moreover, OCC points out that Verizon does not show that TWC has residential customers through White Pages listings or ported numbers.

Verizon points out that in August 2006 TWC entered into an agreement with Sprint Communications to provide VoIP telephone service in several areas including Verizon exchanges. To substantiate its claim that TWC offers residential local service in 23 of the 24 Verizon exchanges, excluding the Chesapeake Exchange, Verizon relied upon website research. Entering zip code and address information, Verizon verified that TWC service is available in the listed exchanges. Moreover, Verizon confirmed its findings with TWC's tariff on file with the Commission. In all but two of the identified

¹⁸ Verizon Application Exhibit 3 and Verizon response to Staff Data Request, questions 1 and 7.

exchanges where TWC is present, Verizon found significant numbers of White Pages listings obtained by Sprint Communications. Because Sprint Communications does not provide local service in these exchanges and because Sprint Communications is the CLEC wholesaler for TWC's VoIP service, Verizon concludes that the listings are for TWC's VoIP customers.

OCC highlights that Verizon did not provide White Pages listing information for the Sylvania and Tipp City exchanges. Conceding that Sprint Communications may be provisioning service for TWC in some areas, OCC claims that Verizon fails to show that Sprint Communications provisions TWC's VoIP service in those exchanges. Another criticism lodged by OCC is that Verizon has not shown that any numbers have been ported to TWC in the involved exchanges. Furthermore, OCC points out that Verizon claimed that TWC is porting residential numbers under the name "tw telecom." OCC alleges that Verizon did not offer support for this claim. Further, OCC contends that tw telecom provides business and wholesale services, not residential services. For these reasons, OCC urges the Commission to reject TWC as an alternative provider of residential service.

In its November 14, 2008, reply, Verizon notes that OCC criticizes Verizon's reliance on website representations, but does not go so far as to conclude that the representations are false. In support of its reliance upon website information, Verizon states that it cannot be required to assume deceit on the part of the company that makes the representation that it provides service in a particular area. Stated otherwise, Verizon believes that a company's representation of presence in an exchange establishes presence. To Verizon, a carrier that is willing to provide service in an area should be regarded as "present" for purposes of Test 4.

The Commission notes that the record reflects, as supported by Sprint Nextel News Release statements and TWC's 2006 Annual Report,¹⁹ that Sprint Communications (the Sprint Nextel entity certified as a CLEC in Ohio) is a provider of wholesale services to other carriers, not a provider of

¹⁹ Verizon Supplemental filing and Verizon Memo Contra at 16.

residential services. However, we find evidence submitted by Verizon that demonstrates the nature of Sprint Communications' activity in all of the exchanges (with the exception of the Sylvania Exchange) where Verizon identified TWC as an alternative provider. The Commission notes that Verizon submitted data²⁰ showing that Sprint Communications is either listing residential lines in the White Pages listings and/or has ported residential phone numbers in all the exchanges (with the exception of the Sylvania Exchange) where TWC was identified by Verizon as an alternative provider. We find that these data demonstrate that Sprint Communications' information in various Verizon databases represent residential customers of a retail, residential service provider that utilizes Sprint Communications' wholesale services to obtain or port residential phone numbers from Verizon or residential White Pages listings in Verizon's directory. Although Sprint Communications is not the retail residential local service provider, the data demonstrate the presence of, at least,²¹ one retail residential service provider that utilizes Sprint Communications' wholesale services in these exchanges. The record demonstrates²² that Sprint Communications is the wholesale provider for TWC residential, VoIP-based service called "Digital Phone." The partnership between TWC and Sprint Communications allows TWC to use its cable facilities in conjunction with Sprint Communications' wholesale services and resources to offer its "Digital Phone" service in all of the exchanges (with the exception of the Sylvania Exchange) where TWC was identified by Verizon as an alternative provider. We note that Verizon failed to provide any evidence to support its claim that TWC is providing residential service in the Sylvania Exchange. Accordingly, as a conservative approach, the Commission will consider TWC as the facilities-based, alternative service provider that is in partnership with Sprint Communications that is providing residential service in the relevant exchanges for the purpose of satisfying Test 4 criteria in all the exchanges

²⁰ Verizon Supplemental filing and Verizon Application, Exhibits 3C and 3D.

²¹ The evidence on the record reveals that Time Warner Cable is the facilities-based, VoIP residential service provider utilizing Sprint Communications' wholesale services in the various exchanges. However, the record does not reveal whether Time Warner Cable is the only entity utilizing Sprint Communications' wholesale services in every exchange or not.

²² Verizon Application, Exhibit 3 and Verizon Memo Contra at 16.

where TWC was identified by Verizon as an alternative provider, except in the Sylvania Exchange.

- (30) In general, OCC contends that Verizon cannot show that a number of wireless carriers have ported numbers in some exchanges. According to OCC, porting of numbers is the only criterion accepted by the Commission to show that wireless carriers serve residential customers in an exchange. OCC lists the following carriers as having no proof of ported numbers: Boost Mobile 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.
- (31) OCC claims that OPEX is not a facilities-based provider. For its claim that OPEX is not a facilities-based carrier, OCC states that OPEX relies upon a company called "Total Call Mobile" to provision its service. Total Call Mobile resells Sprint's service. This arrangement, according to OCC, disqualifies OPEX as an alternative provider.

Verizon claims that OCC is wrong. Verizon agrees that OPEX offers its wireless service through Total Call Mobile. Verizon adds, however, that Total Call Mobile is an affiliate of Total Call International, a facilities-based provider. According to Verizon, some international traffic passes over the networks of Sprint PCS and Total Call International. Verizon, therefore, concludes that OPEX is a facilities-based provider and should remain as an alternative provider.

In its reply, OCC maintains its claim that Verizon has failed to show that OPEX is a facilities-based provider. Although Verizon points out the OPEX offers its service through Total Call Mobile, OCC emphasizes that Verizon failed to show that OPEX "owns, operates, manages, or controls" facilities. Moreover, OCC highlights that Verizon did not show a

corporate relationship between OPEX and Total Call Mobile. OCC notes that Verizon mentions that some international traffic passes over the networks of Sprint PCS and Total Call Mobile. However, OCC points out that Verizon offers nothing to show that OPEX's local traffic passes through facilities that it owns, operates, controls, or maintains. From the information provided by Verizon, OCC concludes that OPEX is merely a reseller.

Verizon has not provided an adequate response to OCC's claim that OPEX is not a facilities-based carrier. Although Verizon asserts that OPEX is somehow affiliated with a facilities-based carrier, Verizon bases its conclusion on conjecture, not evidence. According to OPEX's website, OPEX resells Total Call Mobile Wireless Mobile Service. Also, according to Total Call Mobile's website, Total Call Mobile provides wireless voice and data communications using the Nationwide Sprint PCS Network. Accordingly, we find that OPEX is not a facilities-based provider and, therefore, does not qualify as a facilities-based, alternative service provider serving a residential market for the purpose of satisfying Test 4 criteria.

- (32) Verizon makes the following claims concerning relevant alternative providers: Boost Mobile is a facilities-based alternative provider in the Circleville and New Philadelphia exchanges; Cleveland Unlimited is a facilities-based alternative provider in the Tipp City, Trotwood, and Wilmington exchanges; Jump Mobile is a facilities-based alternative provider in the Englewood Exchange; and nTelcos is a facilities-based alternative provider in the Portsmouth Exchange. To support its claim that Cleveland Unlimited and nTelcos are alternative providers in Verizon's exchanges, Verizon relied upon website tools. For additional confirmation, Verizon notes that nTelcos has a store locator function that confirms its presence in the relevant exchanges.

In its memorandum, OCC states that Verizon did not provide website documentation to support its claim that Cleveland Unlimited and nTelos are alternative providers. According to OCC, the company's website tool does not include a service availability search by zip code. Because of this limitation, OCC cannot confirm the presence of Cleveland Unlimited or nTelos in the listed exchanges.

Verizon states in its November 14, 2008, reply that in its initial filing it showed the zip code inputs into the WirelessAdvisor.com website. The website shows the various wireless providers in a given exchange and the system and technologies used by each carrier. Verizon affirms that the information obtained establishes that Cleveland Unlimited and nTelos are present in the relevant exchanges.

We find that Verizon failed to submit any evidence to demonstrate that Boost Mobile, Cleveland Unlimited, or Jump Mobile are, in fact, serving residential customers in the respective exchanges. Accordingly, Boost Mobile, Cleveland Unlimited, and Jump Mobile will not be considered as facilities-based, alternative service providers serving a residential market for the purpose of satisfying Test 4 in the respective exchanges listed above. Furthermore, we find that the nTelcos' website shows that nTelcos resells Sprint Nextel Wireless Service. We, therefore, must conclude that nTelcos is not a facilities-based provider and does not qualify as a facilities-based alternative service provider serving a residential market for the purpose of satisfying Test 4.

- (33) Like other wireless carriers, OCC urges the Commission to reject T-Mobile as a wireless provider because Verizon has failed to confirm that T-Mobile has ported numbers in the Ashland, Cambridge, Englewood, and Port Clinton exchanges.

To verify T-Mobile's presence, Verizon relied on the company's website tool. In addition, Verizon confirmed through the LERG that T-Mobile has NPA-NXX number blocks assigned to it in the Ashland, Brunswick, Medina, Montrose, and New Philadelphia exchanges. Moreover, Verizon declares that T-Mobile has ported numbers in the Athens, Bowling Green, Brunswick, Delaware, Jackson, Marion, Medina, Montrose, New Philadelphia, Norwalk, Plain City, Sylvania, Tipp City, Trotwood, Troy, and Wadsworth exchanges.

In its reply memorandum, OCC does not challenge the 16 exchanges in which Verizon claims that T-Mobile has ported numbers. OCC, however, continues to object to Verizon's claim that T-Mobile is an alternative provider in the Ashland, Cambridge, Englewood, and Port Clinton exchanges. According to OCC, the Commission has required more than

website information as proof that wireless carriers serve residential customers in any given exchange. Although Verizon claimed that T-Mobile has number blocks assigned to it in the Ashland Exchange, OCC is not persuaded. Number blocks are insufficient proof. According to OCC, carriers often receive number blocks and yet do not serve customers in a given exchange. In sum, OCC finds that Verizon's evidence in support of the Ashland Exchange falls short and that OCC's objection to the Cambridge, Englewood, and Port Clinton exchanges remains unanswered. OCC, therefore, continues to urge the Commission to eliminate T-Mobile as an alternative provider in the Ashland, Cambridge, Englewood, and Port Clinton exchanges.

With respect to AT&T Wireless, Cincinnati Bell Wireless, Cricket, Revol, Sprint/Nextel, and T-Mobile, the Commission finds that Verizon submitted evidence that these providers are facilities-based providers that offer residential services and port residential telephone numbers in the process of serving residential customers in the relevant exchanges as outlined in Attachments A and B. Accordingly, the Commission will consider the wireless providers listed above as facilities-based, alternative service providers that serve residential customers in the relevant exchanges for the purpose of satisfying Test 4.

- (34) If not rejected outright, OCC proposes that affiliated providers operating in the same exchange should be counted as one provider. OCC points out that the following pairs of providers are affiliates: AT&T and AT&T Wireless, Sprint Wireless and Boost Mobile, Cincinnati Bell and Cincinnati Bell Wireless, and Cricket and Jump Mobile. Where these pairs of companies operate in the same exchanges, OCC urges the Commission to count them as one provider. To OCC, counting affiliates as two companies thwarts Section 4927.03(A)(3), Revised Code, which requires the applicant to show that there are no barriers to competition. For comparison, OCC alludes to Test 4 which prohibits an incumbent from counting its wireless affiliate as an alternative provider. Likewise, OCC contends that an alternative provider should be barred from counting its wireless and wireline operations as two individual providers. Similarly, OCC suggests that two wireless affiliates should not be counted individually. Allowing affiliates to count separately, according to OCC, would undermine the

Commission's determination that five providers in one exchange present sufficient evidence of market accessibility and competition.

Verizon rejects OCC's assumption that affiliated providers do not compete and thus fulfill the requirement of having five alternative providers present in an exchange. As a basis for its position, Verizon looks to prior Commission decisions where the Commission has determined that affiliation, by itself, is not a disqualifying factor for an alternative provider. Verizon notes that affiliated providers have been considered separate entities for the purpose of counting alternative providers. Moreover, Verizon finds nothing in the Revised Code or the Commission's rules that establishes the burdens proposed by OCC. Verizon urges the Commission to rely on its rules to gauge presence.

Responding specifically, Verizon takes issue with OCC's claim that Boost Mobile should be counted as one with Sprint Wireless because Boost Mobile is a prepaid affiliate of Sprint Wireless. Verizon identifies Boost Mobile and Sprint Wireless as alternative providers in the Circleville and New Philadelphia exchanges. According to Verizon, Boost Mobile provides prepaid service over a different network than Sprint, uniquely qualifying it as an alternative provider in the Circleville and New Philadelphia exchanges. Furthermore, because Boost Mobile markets to a different group of customers, Verizon believes that Boost Mobile has an independent presence and should not be counted as one with Sprint Wireless.

In its reply, OCC claims that Verizon admitted that Boost Mobile, a Sprint affiliate, does not use separate facilities. According to OCC, Boost Mobile uses Sprint Nextel's iDEN network and Sprint Nextel's CDMA network.

Responding to OCC's objection that Cricket and Jump Wireless, AT&T and AT&T Wireless, and CBET and CBT Wireless are affiliated pairs, Verizon reiterates the Commission's precedent that affiliation is not by itself a disqualifying factor for an alternative provider.

In its reply, OCC highlights that Verizon did not discuss whether Cricket and Jump Mobile are facilities-based. Furthermore, OCC asserts that Verizon did not address OCC's evidence that Cricket and Jump Mobile are resellers of Leap Wireless's service.

OCC contends that Verizon has not shown that AT&T and AT&T Wireless act independently of each other. Disqualifying AT&T as an alternative provider would eliminate the Cambridge Exchange for lacking at least five alternative providers. In reviewing Verizon's responses to interrogatories concerning ported numbers, OCC found that Verizon could not determine whether the "AT&T" listed in several exchanges was AT&T Wireless or AT&T the CLEC. OCC states that Verizon assumed that "AT&T" referred to AT&T the CLEC where Cingular Wireless (aka AT&T Wireless) was also listed. OCC urges the Commission not to make the same assumption.

In its November 14, 2008, reply, Verizon responds to OCC's claim that Cricket and Jump Mobile are not facilities-based carriers. Verizon points out that in its response to staff's interrogatory, Verizon furnished proof that Cricket and Jump Mobile are operating subsidiaries of Leap Wireless. The website provided by Verizon makes reference to networks, auctions, licenses, markets, and subscribers reached, thus providing evidence that the companies are facilities-based carriers.

Responding to OCC's objection to AT&T and AT&T Wireless, Verizon rejects OCC's assumption that affiliated providers do not compete and thus fulfill the requirement of having five alternative providers present in an exchange. Verizon finds support in prior Commission decisions where the Commission has determined that affiliated providers have been considered separate entities for the purpose of counting alternative providers. Verizon finds nothing in the Revised Code or the Commission's rules that establishes the burdens proposed by OCC. Verizon urges the Commission to rely on its rules to gauge whether the affiliated providers are present.

- (35) We reject OCC's argument that affiliated providers operating in the same exchange should be counted as one provider for the purposes of meeting Test 4 requirements. The Commission

evaluated similar situations and reached the same conclusion in several prior BLES alternative regulation cases.²³ However, we note that based on evidence provided by Verizon (e.g., ported telephone number data), there are no data on the record to prove that affiliated wireless providers are in fact serving residential customers in the same exchange. Lacking sufficient data, we will only consider the wireless provider shown by Verizon to serve residential customers in an exchange. We would point out that Verizon, or any other ILEC, is free to demonstrate through other means that both affiliated wireless providers are in fact serving residential customers in the same exchange.

Accordingly, the Commission considers each of the following pairs of alternative providers as two separate alternative providers for the purpose of meeting the Test 4 requirements in a given exchange: AT&T and AT&T Wireless, CBET and Cincinnati Bell Wireless, Sprint Wireless and Boost Mobile, Cricket and Jump Mobile, and Revol and Cleveland Unlimited.

- (36) Upon a thorough review of the record in this proceeding, the Commission determines that, pursuant to Section 4927.03(A), Revised Code, Verizon has met its burden of proof for the 21 exchanges identified in Attachment A of this finding and order. Specifically, Verizon 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 Verizon's BLES is subject to competition or 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, the Commission determines that Verizon's application is complete and meets the filing requirements of Rule 4901:1-4-09, O.A.C. As a final matter, the Commission finds that Verizon's submitted proposed tariff revisions, as amended on December 11, 2008, are just and reasonable as applicable to the exchanges identified in Attachment A of this Finding and Order and are approved for such exchanges.

It is, therefore,

²³ Case Nos. 06-1013-TP-BLS, 07-259-TP-BLS, 07-1312-TP-BLS, 08-107-TP-BLS, 08-594-TP-BLS, and 08-1007-TP-BLS.

ORDERED, That Verizon's motion to supplement its application is granted. It is, further,

ORDERED, That, for the exchanges identified in Attachment A of this Finding and Order, Verizon's application for an alternative form of BLES and other Tier 1 services is granted and such services shall be subject to the pricing flexibility provided for in Rule 4901:1-4-11, O.A.C. It is, further,

ORDERED, That, for the exchanges identified in Attachment B of this Finding and Order, Verizon's application for an alternative form of BLES and other Tier 1 services is denied. It is, further,

ORDERED, That, consistent with Rule 4901:1-4-11, O.A.C., Verizon shall, at least 30 days prior to any increase in rates, provide notice to affected customers. It is, further,

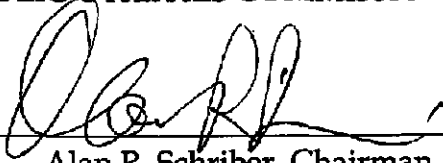
ORDERED, That the proposed tariff revisions are approved as discussed above. Verizon is authorized to file complete copies of tariffs in final form consistent with this Finding and Order. Verizon shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this docket. It is, further,

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

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

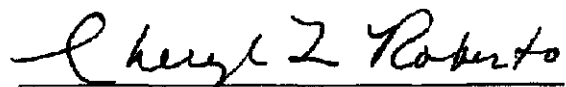
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Paul A. Centolella

Ronda Hartman Fergus



Valerie A. Lemmie


Cheryl L. Roberto

LDJ/NS:vrn/ct

Entered in the Journal

MAR 18 2009


Renee J. Jenkins
Secretary

Verizon North Inc.
Case No. 08-989-TP-BLS
Test 4 Results

<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>
1 Ashland	4	49.57%	5	Armstrong Cable Level 3 /Alt. Provider Time Warner Cable AT&T Wireless T-Mobile	Approved
2 Athens	4	52.10%	5	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
3 Bowling Green	4	55.69%	6	Buckeye Cable Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
4 Brunswick	4	19.76%	6	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile Revol Wireless	Approved
5 Cambridge	4	24.18%	5	AT&T Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel	Approved
6 Circleville	4	29.55%	5	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved

7 Delaware	4	45.60%	6	Insight Phone Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
8 Englewood	4	43.61%	5	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Cincinnati Bell Wireless Sprint/Nextel	Approved
9 Marion	4	34.01%	5	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
10 Medina	4	43.55%	7	Armstrong Cable Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Revol Wireless Sprint/Nextel T-Mobile	Approved
11 Montrose	4	26.40%	6	AT&T Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
12 New Philadelphia	4	23.82%	5	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel T-Mobile	Approved
13 Norwalk	4	35.28%	7	AT&T Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel Revol Wireless T-Mobile	Approved

14	Plain City	4	29.17%	5	Level 3 /Alt. Provider	Approved
					Time Warner Cable	
					AT&T Wireless	
					Sprint/Nextel	
					T-Mobile	
15	Port Clinton	4	29.05%	5	Buckeye Cable Level	Approved
					3 /Alt. Provider	
					Time Warner Cable	
					AT&T Wireless	
					Sprint/Nextel	
16	Sylvania	4	32.23%	6	Buckeye Cable Level	Approved
					3 /Alt. Provider	
					AT&T Wireless	
					Sprint/Nextel	
					Revol Wireless	
17	Tipp City	4	47.54%	6	T-Mobile	Approved
					Level 3 /Alt. Provider	
					Time Warner Cable	
					AT&T Wireless	
					Cincinnati Bell Wireless	
18	Trotwood	4	42.20%	6	Sprint/Nextel	Approved
					T-Mobile	
					Level 3 /Alt. Provider	
					Time Warner Cable	
					Cincinnati Bell Ext. Ter.	
19	Troy	4	49.96%	7	AT&T Wireless	Approved
					Sprint/Nextel	
					Cricket Wireless	
					Cincinnati Bell Wireless	
					Time Warner Cable	
20	Wadsworth	4	31.76%	6	T-Mobile	Approved
					Sprint/Nextel	
					Revol Wireless	
					AT&T Wireless	
					Level 3 /Alt. Provider	

					Level 3 /Alt. Provider	
					Time Warner Cable	
					AT&T Wireless	
					Cincinnati Bell Wireless	
21	Wilmington	4	37.50%	5	Sprint/Nextel	Approved

Verizon North Inc.
Case No. 08-989-TP-BLS
Test 4 Results

<u>Exchange Name</u>	<u>Test Used</u>	<u>% Access Lines Lost</u>	<u># of Unafilt. F.B. Alt. Providers</u>	<u>Names of Unaffiliated F.B. alt. providers</u>	<u>Test #4 Result</u>
1 Chesapeake	4	42.26%	4	AT&T Armstrong Cable AT&T Wireless Sprint/Nextel	Denied
2 Jackson	4	18.07%	4	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel	Denied
Porthsmouth	4	41.00%	4	Level 3 /Alt. Provider Time Warner Cable AT&T Wireless Sprint/Nextel	Denied