

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 17, 2009

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

In order to ensure that Ohio residential telephone consumers receive adequate service at reasonable rates, the Office of the Ohio Consumers' Counsel ("OCC"), an intervenor on behalf of residential telephone customers,¹ files this application for rehearing of the Opinion and Order ("Order") that the Public Utilities Commission of Ohio ("Commission" or "PUCO") journalized on March 18, 2009 in this proceeding. OCC files this Application for Rehearing under R.C. 4903.10 and Ohio Adm. Code 4901-1-35. In the Order, the Commission granted Verizon North, Inc. ("Verizon" or "Company") the ability to raise the rate charged customers for basic local service ("basic service") by \$1.25 per year and for basic Caller ID by as much as \$0.50 per year,² in 21 exchanges.³

³ See Order, Attachment A. The 21 exchanges are: Ashland, Athens, Bowling Green, Brunswick, Cambridge, Circleville, Delaware, Englewood, Marion, Medina, Montrose, New Philadelphia, Norwalk, Plain City, Port Clinton, Sylvania, Tipp City, Trotwood, Troy, Wadsworth and Wilmington. The Order rejected Verizon's request for basic service alternative regulation ("alt. reg.") in three exchanges: Chesapeake, Jackson and Portsmouth. See Order, Attachment B.

OCC seeks rehearing of the Commission's Order. The Order is unreasonable and unlawful for the following reasons:

1. The PUCO erred in approving carriers as alternative providers by including ported numbers that Verizon could not verify as residential numbers.
2. The PUCO erred by including T-Mobile as an alternative provider in the Ashland exchange and Cricket in the Troy exchange even though the carriers have no ported numbers in these exchanges.
3. The PUCO erred in counting Buckeye Cable as an alternative provider in the Bowling Green and Port Clinton exchanges, even though it is inconclusive whether the carrier's ported numbers in those exchanges are for residential or business customers.
4. The PUCO erred in counting AT&T's competitive local exchange carrier ("CLEC") as an alternative provider in the Cambridge and Montrose exchanges.
5. The PUCO erred in determining that affiliated wireless companies listed as alternative providers in the same exchanges should be counted as separate providers.

The reasons for granting OCC's Application for Rehearing are set forth in the accompanying Memorandum in Support.

Respectfully submitted,

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Ohio Administrative Code.)

⁸ As a result of Verizon withdrawing TracFone, the Application named only four potential alternative providers in the Chesapeake exchange, and thus the exchange does not qualify for basic service alt. reg. under Test. See OCC's Reply to Verizon's Memorandum in Response (November 7, 2008) ("Reply") at 4. The Commission agreed and denied the Application for the Chesapeake exchange. Order at 9.

requires that “[a]n 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.”

In its Opposition and Reply, filed on October 17, 2008 and November 7, 2008, respectively, OCC delineated the many inadequacies of the Application. Among other things, OCC showed that:

- ▶ T-Mobile should not be counted as a facilities-based alternative provider in the Ashland, Cambridge, Englewood and Port Clinton exchanges because Verizon did not demonstrate that T-Mobile has ported numbers in those exchanges, as the Commission has required in the past for wireless carriers to qualify as facilities-based alternative providers.⁹
- ▶ Similarly, Cricket does not have ported numbers in the Troy exchange, and thus does not qualify as a facilities-based alternative provider in that exchange.¹⁰
- ▶ It is inconclusive whether the ported numbers for Buckeye Cable in the Bowling Green and Port Clinton exchanges and Time Warner in the Tipp City exchange are for residential or business customers, and thus the PUCO should reject these carriers as facilities-based alternative providers in these exchanges.¹¹
- ▶ The documentation provided by Verizon – which has the burden of proof in this proceeding¹² – regarding the presence of AT&T’s CLEC in the Cambridge, Montrose and Norwalk exchanges was inadequate, given that AT&T’s CLEC does not serve residential customers.¹³
- ▶ Wireless affiliates of other wireless providers (i.e., Sprint and Boost, Cricket and Jump) use the same facilities and do not compete with one another, and

⁹ Opposition at 16; Reply at 13-14.

¹⁰ Opposition at 16.

¹¹ Id. at 10; Reply at 9-10, 12.

¹² Ohio Adm. Code 4901:1-4-10(A).

¹³ Opposition at 9-10; Reply at 8-9.

thus should not qualify as separate facilities-based alternative providers in the exchanges where Verizon named both carriers.¹⁴

Despite these deficiencies in the Application, the Commission included T-Mobile, Cricket, Buckeye Cable, Time Warner and AT&T's CLEC as facilities-based alternative providers in the above-named exchanges. And although the Commission stated that "there are no data on the record to prove that affiliated wireless providers are in fact serving residential customers in the same exchange,"¹⁵ the Commission nevertheless considered wireless providers that are affiliates of other wireless companies to be separate alternative providers.¹⁶ As discussed herein, the Commission erred in making these determinations, and should modify the Order.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10. The statute allows that, within 30 days after a PUCO order is issued, "any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding." Among other things, OCC filed an Opposition to the Application and a Reply to Verizon's memorandum contra in this proceeding.

R.C. 4903.10 requires that an application for rehearing must be "in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful." In addition, Ohio Adm. Code 4901-1-35(A) states: "An application for rehearing must be accompanied by a memorandum in support, which shall be filed no later than the application for rehearing."

¹⁴ Opposition at 16-18; Reply at 6-7.

¹⁵ Order at 30.

¹⁶ Id.

In considering an application for rehearing, R.C. 4903.10 provides that “the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear.” The statute also provides: “If, after such rehearing, the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed.” As shown herein, the statutory standard for abrogating and modifying the Order is met here.

III. ALLEGATIONS OF ERROR

A. The PUCO erred in approving carriers as alternative providers by including ported numbers that Verizon could not verify as residential numbers.

1. Level 3 Communications

The Commission determined that Level 3, in conjunction with an unnamed VoIP provider, qualifies as a facilities-based alternative provider of residential service for Test 4 purposes because “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.”¹⁷ To support this conclusion, the Commission cited the Application, Verizon Exhibits 3C and 3D and Verizon’s Supplement.¹⁸ A review of these documents, however, shows that the Commission erred in making its determination for the Athens, Bowling Green, Trotwood and Wilmington exchanges.

¹⁷ Id. at 19.

¹⁸ Id. at n. 15.

In the Application, the documentation that Verizon submitted regarding Level 3 for all exchanges – including the four listed above – was nothing more than a generic screen shot of Level 3’s website.¹⁹ The documentation mentions no specific exchanges and mentions nothing about residential service.

Exhibit 3C to the Application only shows that Level 3 has had NXX numbers assigned to it in the exchanges. Nothing in this exhibit specifies any of the NXX numbers are used for residential service.

In Exhibit 3D, Verizon listed ported numbers by carrier in each exchange. Again, nothing in this exhibit shows that any of the ported numbers are residential numbers. In fact, Verizon admitted that it did not verify that any of the ported numbers for Level 3 are residential numbers. In its first set of data requests to the Company, the PUCO Staff asked Verizon whether the ported numbers in Exhibit 3D represent only residential ported numbers or both residential and business numbers.²⁰ Verizon’s response was: “The data provided in Exhibit 3D is based on both residential and business ports for the various exchanges.”²¹ Thus, the ported numbers listed in Exhibit 3D could be either business or residential numbers.

Further, Verizon also stated that “[a]lthough **most** of the carriers had at least one ported number in the exchanges identified, even if Verizon did not find a residential number that had been ported, Verizon still included that carrier as an alternative provider

¹⁹ See Application, Exhibit 3B.

²⁰ See Verizon’s Response to the Staff’s Data Request – First Set (Dated October 22, 2008 – Response October 29, 2008) with Supplement (docketed November 3, 2008) (“Data Request Response”), Question 3.b.

²¹ Id., Response 3.b.

based on its web-based research....”²² Thus, it is unclear whether, based on this information, any of the carriers Verizon named as alternative providers of residential service had any residential ported numbers. And, as discussed above, Verizon’s web-based research does not show that Level 3 provides service to residential customers.

All that remains, then, to support the Commission’s conclusion is the documentation in the Supplement. The information in the Supplement that is relevant to the Commission’s determination concerning Level 3 is the white pages information that Verizon submitted to augment Exhibit 3B. Although the Company included residential white pages documentation for Level 3 in many exchanges, the Supplement contained **no** white pages documentation regarding Level 3 in the Athens, Bowling Green, Trotwood and Wilmington exchanges.

Thus, contrary to the Commission’s finding, the documentation contained in the Application, the exhibits to the Application and the Supplement does **not** show that Level 3 provides residential service in the Athens, Bowling Green, Trotwood and Wilmington exchanges. Verizon failed to meet its burden of proof, and the Commission should thus reverse its decision and disqualify Level 3 as a facilities-based alternative provider of residential service in the four exchanges.

Because Verizon has not shown that Level 3, in conjunction with an unnamed VoIP provider, provides residential service in the Athens and Wilmington exchanges, Verizon would not meet Test 4 in those exchanges. The Commission should abrogate the Order and disapprove the Application for the Athens and Wilmington exchanges, so that consumers in these exchanges are protected from rate increases.

²² Id., Response 3.c. (emphasis added).

2. Time Warner Cable

Similarly, the Commission should disqualify Time Warner Cable (“Time Warner”) as an alternative provider in the Tipp City exchange. Although Time Warner’s website shows an offering of residential service in Tipp City’s ZIP code area, that fact alone is inconclusive, given that ZIP code areas do not always match exchange boundaries. According to a map produced on the PUCO’s website, the 45371 ZIP code that Verizon used for its web-based research concerning Tipp City also covers portions of the New Carlisle, Troy, West Milton and Vandalia exchanges.²³ Thus, the Commission cannot rely solely on Verizon’s Internet-based research.

Verizon offers nothing more to support Time Warner as an alternative provider of residential service in the Tipp City exchange. Although the Commission noted the “partnership” between Time Warner and Sprint Communications (“Sprint Comm”),²⁴ Verizon did not show that either Time Warner or Sprint Comm had ported residential number or white pages listings in the Tipp City exchange.²⁵ Verizon does show that “tw telecom” has ported numbers in the exchange,²⁶ but as OCC noted, tw telecom serves only business customers.²⁷ And although both Time Warner and Sprint Comm apparently have NXX numbers assigned to them in the Tipp City exchange,²⁸ as

²³ Using the PUCO’s interactive map at http://www.puc.state.oh.us/website/AllUtilities_ADF/default.aspx, the map was produced by having the map contents show only telecommunications exchange boundaries, clicking on “Find a Zipcode” under the “Political” menu option and inputting the 45371 ZIP code. Although the map contains a disclaimer regarding its accuracy, the result produced by the map is enough to question the validity of Verizon’s Internet-based research.

²⁴ Order at 23.

²⁵ See Application, Exhibit 3D; Supplement, White Pages Information.

²⁶ Application, Exhibit 3D.

²⁷ Reply at 12.

²⁸ See Application, Exhibit 3C.

discussed above it is unclear whether they are for residential or business purposes, or that they are even being used.

Based on the above, the PUCO should disqualify Time Warner as an alternative provider of residential service in the Tipp City exchange, and thus protect consumers there from rate increases.

B. The PUCO erred by including T-Mobile as an alternative provider in the Ashland exchange and Cricket in the Troy exchange even though the carriers have no ported numbers in these exchanges.

In the Order, the Commission found that several wireless carriers qualify as facilities-based alternative providers of residential service in various exchanges. The sole basis for the Commission's approval of the wireless carriers was a showing that the carriers port numbers in the 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 [to the Order].²⁹

But the Commission's determination was wrong regarding T-Mobile in the Ashland exchange and Cricket in the Troy exchange.

In order for a carrier to qualify as an alternative for Test 4 purposes, the Commission has demanded proof that carriers – and wireless carriers in particular – are doing more than “offering” residential service in an exchange. OCC showed that Verizon's web-based research and the presence of NXX numbers is insufficient to conclude that a carrier is actually providing residential service in an exchange.³⁰ By

²⁹ Order at 27.

³⁰ Opposition at 8.

basing its decision strictly on the existence of ported numbers, the Commission agreed.³¹ Therefore, because Verizon did not show ported numbers for T-Mobile in the Ashland exchange and Cricket in the Troy exchange,³² the Commission's decision regarding the Ashland and Troy exchanges is contrary to PUCO precedent.

In addition, the Commission's approval of T-Mobile as an alternative provider in the Ashland exchange is inconsistent with the PUCO's treatment of T-Mobile in other exchanges. As OCC pointed out in its Opposition,³³ Exhibit 3D to the Application shows that T-Mobile has no ported numbers in the Ashland, Cambridge, Englewood and Port Clinton exchanges. Among these four exchanges, however, the Commission approved T-Mobile as an alternative provider only in the Ashland exchange and rejected T-Mobile in the other three exchanges.³⁴ The Commission gave no reason why T-Mobile should be treated differently in the Ashland exchange than in the other three exchanges.

This same situation exists for Cricket. The Commission rejected Cricket as a alternative provider in the Englewood, Tipp City, Trotwood and Wilmington exchanges. But even though Verizon did not show that Cricket has ported numbers in the Troy exchange, the Commission accepted Cricket as an alternative provider in that exchange. The Commission gave no reason why Cricket should be treated differently in the Troy exchange than in the other four exchanges.

R.C. 4903.09 requires the Commission to file in the record of contested cases "findings of fact and written opinions setting forth the reasons prompting the decisions

³¹ Order at 27.

³² See Opposition at 16; Hardie Affidavit, Attachment KJH-1.

³³ See Opposition at 16; Hardie Affidavit, Attachment KJH-1.

³⁴ See Order, Attachment A.

arrived at, based upon said findings of fact.” The Commission has failed to set forth the reasons why it approved T-Mobile as an alternative provider in the Ashland exchange and Cricket in the Troy exchange. The Commission found only five alternative providers in the Ashland exchange, and thus removing T-Mobile as an alternative provider would mean that Verizon does not meet Test 4 – and does not qualify for basic service alt. reg. – in the Ashland exchange.

The Commission’s decision is thus unlawful under R.C. 4903.09, and the PUCO should abrogate the Order concerning T-Mobile in the Ashland exchange and Cricket in the Troy exchange. Consumers there should be protected against rate increases.

C. The PUCO erred in counting Buckeye Cable as an alternative provider in the Bowling Green and Port Clinton exchanges, even though it is inconclusive whether the carrier’s ported numbers in those exchanges are for residential or business customers.

The Commission approved Buckeye Cable as an alternative provider in the Bowling Green and Port Clinton exchanges based on references to the exchanges in Buckeye Telesystem’s tariff, and based on telephone numbers in the exchanges that are ported by Buckeye Telesystem.³⁵ The PUCO also based its determination regarding the Bowling Green exchange on NXX numbers assigned to Buckeye Telesystem in the exchange,³⁶ and regarding the Port Clinton exchange on Verizon’s unsupported statement in a pleading that it verified that the ported numbers in the Port Clinton are residential numbers.³⁷ Although Buckeye Telesystem does not serve residential customers,³⁸ the Commission nevertheless determined that “Buckeye Cable is the retail, VoIP-based

³⁵ Id. at 13.

³⁶ Id.

³⁷ Id. at 14.

³⁸ OCC Reply at 10. See also Buckeye Telesystem Tariff P.U.C.O. No. 2, Section 8 (showing no prices or offerings for residential service).

residential service provider that utilizes Buckeye Telesystem's wholesale services" in these exchanges.³⁹ The Commission's conclusion is faulty.

Nothing in the record shows that the ported numbers in these exchanges are residential numbers. This is especially true for the Bowling Green exchange, because Verizon alleged only that it had verified ported residential numbers in the Port Clinton exchange. Even then, given the fact that Verizon acknowledged that the ported number data "is based on both residential and business ports for the various exchanges,"⁴⁰ Verizon's claim regarding the ported numbers in Port Clinton is unsubstantiated. Verizon – which has the burden of proof in this proceeding – has not shown that the numbers ported to Buckeye Telesystem, which serves only business customers, are residential numbers.

In addition, a mere reference to the Bowling Green and Port Clinton exchanges in Buckeye Telesystem's tariff is inconclusive. The tariff mentions specific "service areas,"⁴¹ but does not list Port Clinton. Although a Bowling Green service area is listed, there is no reference to residential service in the tariff. And, as OCC noted, Buckeye Cable's residential service website merely listed Bowling Green as part of a local calling area, not part of a "key" service area, i.e., an exchange where Buckeye Cable is providing telephone service.⁴²

The record does not support the Commission's conclusion that Buckeye Cable is providing VoIP-based telephone service over Buckeye Telesystem's facilities in the

³⁹ Order at 14.

⁴⁰ Data Request Response, Response 3.b.

⁴¹ Buckeye Telesystem Tariff P.U.C.O. No. 2, Section 3.1.1.

⁴² OCC Reply at 9.

Bowling Green and Port Clinton exchanges. The Commission should abrogate the Order and remove Buckeye Cable as an alternative in these exchanges. Removing Buckeye Cable from the Port Clinton exchange would mean that the exchange does not qualify for basic service alt. reg. under Test 4. In addition, removing Buckeye Cable and Level 3 from the Bowling Green exchange, as recommended in Section III.A.1., above, would mean that the Bowling Green exchange does not qualify for basic service alt. reg. under Test 4. Consumers in these exchanges should be protected from rate increases.

D. The PUCO erred in counting AT&T's competitive local exchange carrier as an alternative provider in the Cambridge and Montrose exchanges.

In finding that Verizon demonstrated the presence of AT&T's CLEC in the Cambridge, Montrose and Norwalk exchanges, the Commission relied on Exhibits 3, 3C and 3D to the Application and Verizon's response to question 2 of the PUCO Staff's data request.⁴³ A review of these documents, however, shows that the Commission's reliance on them is misplaced.

In naming AT&T's CLEC as an alternative provider in the Cambridge, Montrose and Norwalk exchanges, Verizon used a ZIP code-based tool on AT&T's website that purportedly shows where AT&T provides service. The website tool, however, does not distinguish between AT&T's service as an incumbent LEC ("ILEC") or as a CLEC.

ZIP code boundaries do not match exchange boundaries, and some ZIP code boundaries overlap exchange boundaries. In researching whether AT&T's CLEC provides residential service in the Cambridge exchange, Verizon inputted the ZIP code 43725 on AT&T's website tool and got a response showing an offer for residential

⁴³ Order at 12.

service.⁴⁴ But according to a map available on the PUCO's website, part of the 43725 ZIP code is in the Newcomerstown exchange,⁴⁵ which AT&T serves as an ILEC. Similarly, the ZIP code Verizon used to purportedly show that AT&T provides CLEC service in the Montrose exchange (44333) overlaps into AT&T's Akron exchange.⁴⁶ Thus, it is unclear whether the website shows that AT&T is offering service in the ZIP codes in the Verizon exchanges in question.

Only in the Norwalk exchange does Verizon show the result of inputting an actual address into AT&T's website tool. The documentation Verizon includes for AT&T in the Norwalk exchange specifically mentions AT&T CallVantage, which is AT&T's digital phone service.⁴⁷ The screen shots provided by Verizon for the Cambridge and Montrose exchanges, however, are different from the screen shots Verizon provided for the Norwalk exchange, and do not mention CallVantage. Thus, it appears that AT&T may be providing service in the Norwalk ZIP code (44857) as a VoIP provider (which does not need a tariff), but as a traditional wireline provider (which requires a tariff) in the 43725 and 44333 ZIP codes. Because the tariff of AT&T's CLEC mentions only business services, this leads to the conclusion that the documentation Verizon provided regarding residential service for AT&T in the Cambridge and Montrose exchanges

⁴⁴ See Application, Exhibit 3B, Cambridge section.

⁴⁵ Using the PUCO's interactive map at http://www.puc.state.oh.us/website/AllUtilities_ADF/default.aspx, the map was produced by having the map contents show only telecommunications exchange boundaries, clicking on "Find a Zipcode" under the "Political" menu option and inputting the 43725 ZIP code. Although the map contains a disclaimer regarding its accuracy, the result produced by the map is enough to question the validity of Verizon's Internet-based research.

⁴⁶ Using the PUCO's interactive map at http://www.puc.state.oh.us/website/AllUtilities_ADF/default.aspx, the map was produced by having the map contents show only telecommunications exchange boundaries, clicking on "Find a Zipcode" under the "Political" menu option and inputting the 44333 ZIP code. Although the map contains a disclaimer regarding its accuracy, the result produced by the map is enough to question the validity of Verizon's Internet-based research.

⁴⁷ See Application, Exhibit 3B, Norwalk section.

concerns those portions of the 43725 and 44333 ZIP codes that are in AT&T ILEC exchanges adjacent to the Cambridge and Montrose exchanges (Newcomerstown and Akron, respectively).

In addition, Verizon's response to question 2 of the PUCO Staff's data request states, "Various sections of tariffs were reviewed for the following non-wireless carriers. In addition, many of the local services provided by Verizon's identified alternative providers are IP-based local residential services and therefore are not tariffed."⁴⁸

AT&T's CLEC was the only carrier for which Verizon did not provide a tariff citation in responding to question 2, and for good reason. The tariff of AT&T's CLEC contains no references to residential customers. Thus, AT&T's CLEC cannot be serving residential customers in those exchanges where it only offers traditional wireline service.

In correctly rejecting AT&T's CLEC as an alternative provider in the Jackson exchange, the Commission stated: "Upon examination of AT&T's tariff, we find that AT&T does not provide local service in the Jackson exchange."⁴⁹ An examination of AT&T's CLEC's tariff also shows that it does not provide local service to residential customers in the Cambridge and Montrose exchanges.

In addition, as discussed above, Verizon did not verify that AT&T ported residential numbers in any exchange. Thus, Verizon has not shown that AT&T is serving residential customers in any exchange, including the Norwalk exchange.

Verizon has not shown that AT&T's CLEC serves residential customers in the Cambridge, Montrose and Norwalk exchanges. Thus, the Commission erred in counting AT&T's CLEC as a facilities-based alternative provider in these exchanges. The

⁴⁸ Data Request Response, response to question 2.

⁴⁹ Order at 12.

Commission should modify the Order and reject AT&T's CLEC as a facilities-based alternative provider. Removing AT&T's CLEC as a facilities-based alternative provider would mean that the Cambridge exchange does not qualify for basic service alt. reg. The Commission should protect consumers in the Cambridge exchange from rate increases.

E. The PUCO erred in determining that affiliated wireless companies listed as alternative providers in the same exchanges should be counted as separate providers.

OCC argued that carriers that are affiliated with each other and that Verizon named as alternative providers in the same exchange should only be counted as one alternative provider for that exchange.⁵⁰ This is particularly true of affiliated carriers providing the same type of service, such Sprint Wireless and its prepaid affiliate, Boost Mobile, in the Circleville and New Philadelphia exchanges, and Cricket and its affiliate Jump Mobile in the Englewood exchange.

The Commission rejected OCC's arguments, stating: "The Commission evaluated similar situations and reached the same conclusion in several prior BLES alternative regulation cases."⁵¹ The Commission, however, ignored the fact that, unlike the Verizon application, the previous cases involved only combinations of affiliated wireline and wireless services. In this proceeding, the Commission determined that affiliated carriers should be counted as separate alternative providers even though the carriers both provide wireless service and over the same facilities.⁵² The Commission's decision is flawed.

A facilities-based alternative provider is one that provides "competing service(s) to the basic local exchange service offering(s) using facilities that it owns, operates,

⁵⁰ OCC Opposition at 16-18.

⁵¹ Order at 29-30 (footnote omitted).

⁵² See Hardie Affidavit at 6-8.

manages or controls to provide such services, regardless of the technology and facilities used in the delivery of the services (wireline, wireless, cable, broadband, etc.).”⁵³ In the case of affiliated carriers that both offer either wireline or wireless service, only one entity owns, operates, manages or controls the facilities. Thus, such carriers should not be counted as separate alternative providers.

The Commission should modify the Order and find that affiliated carriers that both offer either wireline or wireless service may be counted as only one facilities-based alternative provider. Although such a modification would not affect the outcome of this proceeding, it is necessary for direction in future basic service alt. reg. cases.

IV. CONCLUSION

As discussed herein, the Commission’s Order is unreasonable and unlawful. In order to protect Verizon’s customers who now are subject to increases in the charges for basic service, the Commission should abrogate and modify the Order as OCC recommends.

Respectfully submitted,

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⁵³ Ohio Adm. Code 4901:1-4-01(G).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing by the Office of the Ohio Consumers' Counsel was provided electronically to the persons listed below on this 17th day of April 2009.

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Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel