BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162.	)))	Case No. 10-1010-TP-ORD

REPLY COMMENTS
BY
MEMBERS OF OHIOANS PROTECTING TELEPHONE CONSUMERS

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I. INTRODUCTION AND SUMMARY

The members of Ohioans Protecting Telephone Consumers ("OPTC")[1] whose names appear as signatories hereto submit these Reply Comments on the proposal of the Staff of the Public Utilities Commission of Ohio ("PUCO" or "Commission") for rules to implement Substitute Senate Bill 162 ("Sub. S.B. 162").[2] OPTC's initial Comments noted that "the PUCO Staff's proposal is a collection of rules designed to address specific provisions of Sub S.B. 162 and to retain some of the PUCO rules that were not rescinded by the legislation."[3] OPTC also stated, "Although the PUCO Staff's proposals most often catch the essence of Sub. S.B. 162, some of the proposed rules miss the mark for

[1] OPTC is an alliance of consumer, legal and low-income advocates that united to ensure that consumer protections were contained in Sub. S.B. 162, and OPTC continues that advocacy regarding the rules implementing the new law.

[2] Sub. S.B. 162, signed by Governor Strickland on June 13, 2010, revised many of the statutes, and rescinded many of the rules of the PUCO, concerning the provision of telecommunications service in Ohio to customers and carriers. As in OPTC's initial Comments, the statutory provisions adopted in Sub. S.B. 162 will be cited in these Reply Comments as "new R.C. ___." New R.C. 4927.03(E) directs the Commission to adopt all rules required by Sub. S.B. 162 within 120 days of the September 13, 2010 effective date of the bill. By Entry dated July 29, 2010, the PUCO sought comment on the PUCO Staff's proposed rules to implement Sub. S.B. 162.

[3] OPTC Comments at 1-2.

serving Ohio consumers."[4] OPTC's initial Comments focused primarily on the areas of the proposed rules that need substantive change.

In these Reply Comments, OPTC responds to the comments filed by the telecommunications industry.[5] In that regard, although the pressure to enact Sub. S.B. 162 ostensibly came from supposedly over-regulated incumbent local exchange carriers ("ILECs"), many of the filed comments show that these ILECs are merely part of monumental industry conglomerates. For example, AT&T filed on behalf of "the AT&T Entities,"[6] which include an ILEC,[7] two competitive local exchange carriers ("CLECs"),[8] three long distance companies[9] and a wireless carrier.[10] Similarly, eight Verizon companies – included five long distance companies,[11] one CLEC,[12] one alternative operator service provider[13] and one wireless carrier[14] – submitted joint comments.[15] Apparently, these multi-part, multi-function entities have concerns that can be presented

[4] Id. at 2.

[5] Comments were filed by OPTC, and by the AT&T Entities ("AT&T"); Cincinnati Bell Telephone Company LLC ("CBT"); the Ohio Cable Telecommunications Association ("OCTA"); the Ohio Telecom Association ("OTA"); tw telecom of ohio llc ("TWTC"); and Verizon.

[6] AT&T Comments at 2, n.1

[7] The Ohio Bell Telephone Company d/b/a AT&T Ohio.

[8] AT&T Communications of Ohio, Inc. and TCG Ohio.

[9] SBC Long Distance d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, and AT&T Corp. d/b/a AT&T Advanced Solutions, Cincinnati SMSA, L.P.

[10] New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

[11] MCI Communications Services, Inc. d/b/a Verizon Business Services, TTI National Inc., Verizon Long Distance LLC, Verizon Enterprise Solutions LLC and Verizon Select Services Inc.

[12] MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services.

[13] Teleconnect Long Distance Services and Systems Company.

[14] Cellco Partnership d/b/a Verizon Wireless.

[15] Verizon Comments at n.1. It should be recalled that (prior to its acquisition by Frontier), Verizon was the second-largest ILEC in the state. Frontier did not file comments in this proceeding. Also "missing in action" is Ohio's third-largest carrier, CenturyLink. These large carriers apparently rely here on the comments of OTA to convey their concerns to the Commission, as do the smaller ILECs.

in unified comments, rather than being specific to the ILECs, which were supposed to be the beneficiary of the legislation.

That said, one over-arching comment needs to be made before moving on to replying to the telephone industry's comments on individual proposed rules: Although the industry's comments are focused intensely on eliminating consumer protection rules supposedly not authorized by statute, the industry speaks loudly by its silence in areas where the draft rules weaken the few consumer protections required by the statute. The industry position also ignores the fact that the legislation forbade the Commission from adopting standards for BLES different from those the General Assembly authorized.[16]

This is especially obvious in the two central consumer protection rules, i.e., proposed Ohio Adm. Code 4901:1-6-12 (Service requirements for BLES) and proposed 4901:1-6-16 (Unfair and Deceptive Acts and Practices).[17] For example, OTA argues that "natural disaster" should be added to proposed rule 12 as an exception to the requirements for installation and repair intervals for BLES, because this is "[c]onsistent with the current rule…."[18] But the current rules are precisely those rules that the industry vehemently opposed during the legislative process concerning Sub. S.B. 162. The industry repeatedly characterizes rules as rescinded by the legislation, when the industry finds those rules objectionable (such as rules preserving consumer protections). But when the industry favors retaining a current rule, industry overlooks the fact that the rule was rescinded by the legislation.

[16] New R.C. 4927.08(B).

[17] As in OPTC's initial Comments, the proposed rules will be cited as "Proposed Rule ___."

[18] OTA Comments at 5.

Further, the statute does not include exceptions for natural disasters or for the other circumstances the industry raises. Thus, the limitations to proposed rule 12 sought by the industry should not be adopted.

Similarly, CBT argues that the rules should globally limit requirements against "an unfair or deceptive act or practice … to those that are practicable in a given communication."[19] CBT, however, ignores the fact that the limitation was included in the legislation as originally introduced, but was removed. The General Assembly replaced the limitation with a provision that says the Commission "**may** prescribe, by rule, a … review process to determine when disclosing such information is not practicable…."[20] CBT's proposal is thus directly contrary to legislative intent.[21]

The industry's tendency to have the Commission go beyond its statutory authority to weaken consumer protections is also evident in other contexts. For example, OTA would have the rules limit special payment arrangements for Lifeline customers to once per year, despite there being no such limitation in the statute.[22] Another example is in AT&T's comments, where the company "agrees with the apparent intent of division (B)(5)" of proposed rule 14, which contains the undefined and absent-from-the-statute term "market-based pricing."[23] On the other hand, AT&T insists that the reference to BLES as part of a bundle or package in the rule be changed because, according to

[19] CBT Comments at 6.

[20] New R.C. 4927.06(A)(1) (emphasis added); see also new R.C. 4927.06(A)(2).

[21] Further, CBT asserts that "**[m]ost** of the information listed in (B)(1)(a) is not practical to disclose in all forms of written and verbal customer communications including, but not limited to, television, radio, print, billboard, and banner advertisements" (CBT Comments at 6 (emphasis added)), without identifying any of the supposedly impracticable disclosures.

[22] OTA Comments at 6; see also CBT Comments at 7-8.

[23] AT&T Comments at 14.

AT&T's interpretation of R.C. 4927.01(A)(1) and (2), "BLES cannot be part of a bundle or package of services…."[24] The Commission should reject this one-sided view rejected.

The Commission should also reject AT&T's argument that the Commission's general powers regarding telephone companies are severely constricted because of new R.C. 4927.03(C), which states that those general powers cannot be used "except to the extent necessary for the commission to carry out" new R.C. Chapter 4927.[25] AT&T's view requires an extremely narrow interpretation of "necessary," ignoring the standard usage of "convenient, useful or making good sense."[26]

II. PROTECTING CONSUMERS DURING THE TIME GAP BETWEEN THE STATUTE AND THE RULES.

In their comments, the members of the telephone industry ignored the time gap between the effective date of Sub. S.B. 162 (September 13, 2010) and the effective date of the new rules implementing the act (sometime next Spring). It is interesting, however, that AT&T describes the provisions of new R.C. 4927.06 regarding unfair or deceptive acts or practices as "self-effectuating,"[27] apparently acknowledging that the statute does not need rules to be enforced. Similarly, the provisions of new R.C. 4927.08 setting standards for the provision of BLES could be viewed as self-effectuating.[28]

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[24] Id.

[25] See id. at 4. AT&T's comments also include a strained reading of the Legislative Service Commission's bill analysis. Id. at 4, n.2.

[26] See http://dictionary.law.com/Default.aspx?selected=1309. R.C. 1.42 requires that "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage."

[27] This reference was made in the context of a statement that "the Commission need not, and should not, repeat the text of that statute in the rule…." AT&T Comments at 17. Apparently, AT&T does not object to the many other portions of the rules where the pertinent statutes are incorporated verbatim. See, e.g., Proposed Rules 12(A) and (C).

[28] As noted in OPTC's initial Comments, the BLES rate increase provisions of new R.C. 4927.12 have also been described as "self-effectuating." See OPTC Comments at 3.

The purpose of OPTC's discussion of the time gap in the initial Comments was intended, in particular, to ensure that the Lifeline marketing efforts and eligibility did not suffer during the period from September 13 until the new rules are effective. The members of OPTC continue to be optimistic that no ILEC will attempt to take advantage of the gap.

III. REPLY TO COMMENTS ON SPECIFIC RULES

OPTC's initial Comments addressed OPTC's concerns regarding the proposed rules and, in the Appendix to the Comments, set forth OPTC's recommended changes to the proposed rules. The Commission should adopt the changes presented in the Appendix to OPTC's initial Comments.

In these Reply Comments, OPTC discusses additional changes, including those suggested by other commenters with which OPTC specifically agrees. None of the other commenters addressed the following proposed rules:

Rule 5 (Automatic approval and notice filing process);

Rule 9 (Eligible Telecommunications Carriers);

Rule 13 (Warm line service);

Rule 17 (Truth in billing requirements);

Rule 18 (Slamming and preferred carrier freezes);

Rule 21 (Termination of community voicemail pilot program);

Rule 24 (Wireless service provisions);

Rule 28 (Bankruptcy);

Rule 29 (Telephone company procedures for notifying the commission of changes in operations);

Rule 32 (Zones of operation, boundary changes, and administration of borderline boundaries);

Rule 34 (Filing of contracts, agreements, or arrangements entered into between telephone companies); and

Rule 35 (Filing of reports by telephone companies subject to the federal communications commission).

OPTC thus has no additional comments regarding these proposed rules, and reiterates support for the changes to these rules that were proposed in OPTC's initial Comments.

Rule 4901:1-6-01 Definitions

Proposed rule 1(A). This proposed rule defines "alternative operator services" ("AOS"). Both AT&T and OTA assert that the Commission has no authority over AOS,[29] and they argue that the definition should be deleted.[30] As discussed infra regarding proposed rule 22, the Commission still has authority to ensure that AOS providers do not commit unfair or deceptive acts or practices, and still has authority for investigative and monitoring purposes. The Commission should reject the telephone industry's arguments and instead should adopt proposed rule 1(A), with the modifications proposed by OPTC.[31]

Proposed rule 1(J). In this proposed rule, the PUCO Staff brought forward the definition of "customer" from the MTSS, but added the term "end user" followed by a comma. TWTC takes issue with the comma, stating that it "elevates this term to equal footing with the remaining list of entities."[32] TWTC suggests removing the comma so

[29] AT&T Comments at 23; OTA Comments at 2, 7.

[30] AT&T Comments at 5; OTA Comments at 2 and Attachment at 1.

[31] See OPTC Comments, Appendix at 1.

[32] TWTC Comments at 3.

that "end user" modifies the remaining entities "to emphasize that this definition is a *retail* concept, rather than a carrier-to-carrier concept."[33] TWTC is wrong.

As OCTA noted, the term "customer" includes both wholesale and retail customers.[34] Some portions of the proposed rules specifically address carriers as wholesale customers,[35] and limiting the term "customer" to retail consumers would be confusing. The Commission should reject TWTC's proposed modification, and should instead delete the term "end user" from this definition, as discussed in OPTC's initial Comments.[36]

Rule 4901:1-6-02 Purpose and scope

CBT provides comments on "special situations that may be unique to CBT."[37] The Commission should not change these rules (or any rules) because of unique situations; that is the purpose of waivers.[38]

Proposed rule 2(B). This proposed rule states, in part, that "[a] wireless service provider is exempt from all rules in Chapter 4901:1-6 except … 4901:1-16-19, lifeline requirements for ETCs [eligible telecommunications carriers]…."[39] AT&T asserts that

[33] Id. at 4 (emphasis in original).

[34] OCTA Comments at 2.

[35] See Proposed Rules 25(A)(2) and 26(A)(3).

[36] OPTC Comments at 5-7. See also OCTA Comments at 2.

[37] CBT Comments at 1.

[38] See, e.g., *In the Matter of the Commission's Review of Chapter 4901-7, Ohio Administrative Code, Standard Filing Requirements for Rate Increases Filed Pursuant to Chapter 4909, Revised Code,* Case No. 08-558-AU-ORD, Entry on Rehearing (May 14, 2010) at 4-5.

[39] Proposed Rule 2(B).

the rule could suggest that "wireless service providers are required to become, or by default are, ETCs."[40] AT&T's concerns are overblown, however.

AT&T ignores that proposed rule 2(B) also makes wireless service providers not exempt from proposed rule 9, which sets out the ETC rules. Proposed rule 9 requires competitive ETCs to apply to the Commission for ETC status. Thus, there is no basis for AT&T's assertion wireless service providers already are or must become ETCs.

Proposed rule 2(C). OCTA proposes this rule be expanded to provide that, to the extent "providers of telecommunications services that are not commercially available as of September 13, 2010 and that employ technology that became available for commercial use only after September 13, 2010"[41] are required under federal law to give their customers access to telecommunications relay services ("TRS"), such providers must comply with the TRS rule, proposed rule 36.[42] Although the prospect seems unlikely, the Commission should allow the possibility rather than foreclose it. OPTC supports OCTA's proposal.

Proposed rule 2(E). AT&T and OTA both assert that "the Commission should make clear that it may waive a statutory requirement when it is given explicit authority to do so."[43] Thus AT&T proposes that the rule be changed to read: "The commission may, upon application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute **from which no waiver is permitted**, for good cause shown."[44] Quite apart from the issue of whether a requirement in a statute

[40] AT&T Comments at 6.

[41] See new R.C. 4927.03(A). OCTA refers to these as "New Telecom Services." OCTA Comments at 3.

[42] Id.

[43] AT&T Comments at 6; OTA Comments at 3 and Attachment at 4.

[44] AT&T Comments at 6 (emphasis in original). See also OTA Comments, Attachment at 4.

that explicitly permits a waiver is "mandated," it seems hard to believe that the Commission could (or would) deny a waiver allowed by R.C. Chapter 4927 simply because its rules did not include that possibility. The Commission should reject the waiver language offered by AT&T and OTA.

Rule 4901:1-6-03 Investigation and monitoring

AT&T asserts that this rule is "inconsistent with the Act" based on its argument (discussed in Section I. above) that the Act's intention is to constrict the Commission's review of telephone companies.[45] But the rule merely states that "[n]othing contained within this chapter shall in any way preclude the commission or its staff" from requiring a telephone company to furnish additional information necessary to carry out the Commission's "**authority** under Title 49"; and monitoring or investigating a telephone company's compliance "**with the law or any of the commission's rules and orders."** (Emphasis added.) The proposed rule recognizes the Commission's authority, and does not attempt to expand that authority. AT&T's proposal that the phrase "consistent with applicable law" be added to this rule is absolutely unnecessary, and the Commission should reject AT&T's proposed language.

Similarly, OTA "recommends constraints be placed on this rule so as not to continue to burden the ILECs with investigation and monitoring unless a trend of non-compliance is detected."[46] But a "trend of non-compliance" with statutory requirements

[45] AT&T Comments at 6. AT&T asserts that the Act "contemplates a less intrusive, and more incident-specific, enforcement model." Id. at 6-7. AT&T provides no citation for this alleged "contemplation" of the Act.

[46] OTA Comments at 3.

(e.g., installing basic service within five days[47]; repairing outages within 72 hours[48]) typically cannot be detected **without** monitoring. Any presumption that the ILECs are currently "burdened" by staff investigations is completely unsupported.

Finally, OTA's proposed language for this rule would allow the PUCO Staff to investigate only BLES, rather than any other telecommunications service.[49] Apparently, OTA would have the Commission ignore its responsibilities to prevent unfair or deceptive acts or practices, which cover all telecommunications services,[50] as well as all the Commission's other responsibilities under new R.C. Chapter 4927.[51] OTA's proposed language would place unrealistic restrictions on the PUCO Staff's monitoring and investigative abilities. The Commission should reject OTA's proposed changes.

Rule 4901:1-6-04 Application process

Proposed rule 4(A)(1). OTA recommends that this rule be changed "to clarify that only information reasonably necessary to implement these rules should be included on the application form."[52] To achieve this clarification, OTA suggests that the following language be inserted in the rule: "The form shall include only information reasonably necessary to implement these rules."[53] OTA's suggested language, however, is superfluous.

[47] New R.C. 4927.08(B)(1).

[48] New R.C. 4927.08(B)(2).

[49] See OTA Comments, Attachment at 4.

[50] See new R.C. 4927.06 and Proposed Rule 16.

[51] The responsibilities include review of carrier-to-carrier transactions.

[52] OTA Comments at 3.

[53] Id., Attachment at 4.

The Commission would only require applicants to provide information that is reasonably necessary to implement PUCO rules. OTA did not provide support for its "clarification," and did not give any examples of unnecessary information the Commission currently requires. The Commission should reject OTA's suggestion.

Proposed rule 4(A)(3). This rule states that "[t]he telecommunications application form must be signed by an officer of the applicant, must be notarized, and must identify any agents or employees authorized to make filings on behalf of the applicant before the commission." AT&T objects to this requirement because it "diverges from the current practice," would impose "unnecessary and burdensome requirements," and "would not add value or improve the process."[54] AT&T recommends that the telecommunications application form be retained in its current format.[55] TWTC and OCTA make similar recommendations.[56]

Requiring an officer's notarized signature on the telecommunications application form for all applications may be unnecessary. The Commission, however, should retain the requirement that applicants must identify the agent or employee who was authorized to make the filing on behalf of the applicant. In addition, the Commission should also retain the requirement that certification applications contain a notarized signature of an officer of the application.

[54] AT&T Comments at 7.

[55] Id.

[56] TWTC Comments at 1-2; OCTA Comments at 4.

Rule 4901:1-6-06 Suspensions

Proposed Rule 6(A). OTA proposes that automatic approval processes, notice filings and tariffs be suspended only for noncompliance with any rule in Chapter 4901:1-6.[57] OTA's proposal, however, focuses on only one of the numerous circumstances for such suspensions. There may be instances, such as the filing of voluminous applications or the filing of numerous similar applications, where the Commission might not be able to determine whether the application should be automatically approved. Further, the Commission may also deem it appropriate to suspend a tariff in order to examine whether the tariff is just and reasonable, as provided in new R.C. 4905.71(B).

Sub. S.B. 162 allows the Commission to suspend a certification application if the Commission finds, within 30 days after the application is filed, that "the applicant lacks financial, technical, or managerial ability sufficient to provide adequate service to the public consistent with law."[58] In addition, the proposed rules regarding telephone company certification and competitive emergency services telecommunications carrier ("CESTC") certification allow interested parties to file objections within 15 days after the application is filed and allow the applicant to respond within seven days after the objections are filed.[59] Under this process, the Commission must do more than just determine whether the applicant has complied with the rules; the Commission must also determine whether the applicant is qualified to provide telecommunications service or to provide service as a CESTC in Ohio.

[57] See OTA Comments at 3 and Attachment at 5.

[58] New R.C. 4927.05(A)(2).

[59] Proposed Rule 10(B)(1).

OTA's proposal would unlawfully and unreasonably limit the Commission's ability to suspend applications and tariffs. The Commission should reject OTA's proposal.

Proposed rules 6(B) and 6(D). These proposed rules allow the Commission to order that the offering of services that have already been approved be suspended if the services may be contrary to or in violation of the PUCO's rules. OCTA proposed that the rules also allow for suspension of services that are contrary to or in violation of Title 49.[60] OCTA's proposal should be adopted.

Rule 4901:1-6-07 Content of customer notice

Proposed rule 7(A). AT&T asserts that "this proposed rule improperly expands the requirements of R.C. § 4927.17" by requiring copies of customer notices to be provided to the Commission and to the Office of the Ohio Consumers' Counsel ("OCC").[61] The members of OPTC will not presume to speak for the Commission, but as to OCC, OPTC will respond as simply as possible. The requirements of customer notice in this proposed rule come from new R.C. 4927.17(A). The very next paragraph of the statute, new R.C. 4927.17**(B),** directs that OCC's (and the PUCO's) contact information must appear on all residential telephone company bills and disconnect notices. Thus it is to be expected that residential customers will call OCC if they have a question about a material change in the rates, terms and conditions of a services and any change in the company's operations that are not transparent to customers and may impact service."[62]

[60] OCTA Comments at 4-5.

[61] AT&T Comments at 8.

[62] New R.C. 4927.17(A).

It only makes sense for OCC to receive a copy of such notices **at the time the customers receive them,** and not fifteen days later, when the zero-day filing is made at the Commission.[63] And the notion that providing a copy of the customer notice to the PUCO and OCC when it is given to customers is "a costly and burdensome bureaucratic process"[64] strains all credulity.

OTA does not go as far as AT&T, but recommends that the notices provided to OCC be limited to those involving "upward alterations of BLES rates."[65] OTA provides no rationale for this recommendation; it is likely that customers will have questions for OCC about things other than **rate increases**, among those that new R.C. 4927.17(A) requires to be provided. On the other hand, CBT refers to the "unintended consequence of requiring advance notices of price decreases," those being delays in the decreases.[66]

A notice requirement should not delay "downward alterations" in rates; such notice can be coincident with the effect of the decrease. OPTC suggests the following language for proposed rule 7(A):

> Except for notices for abandonment or withdrawal of service pursuant to rules 4901:1-6-26 and 4901:1-6-25 of the Administrative Code, respectively, ~~and upward alterations of~~ FOR INCREASES IN basic local exchange service (BLES) rates pursuant to rule 4901:1-6-14 of the Administrative Code, AND FOR DECREASES IN RATES, a telephone company shall provide at least fifteen days advance notice to its affected customers, the commission, and the office of consumers' counsel (OCC) of any material change in the rates, terms, and conditions of a service and any change in the company's operations that are not transparent to customers and may impact service.

[63] See AT&T Comments at 8.

[64] Id.

[65] OTA Comments at 4.

[66] CBT Comments at 2 (emphasis in original). OTA also changes this rule to exclude advance notice of rate decreases (OTA Comments, Attachment at 6), without commenting on the subject.

The Commission should also adopt proposed rule 7(B) as recommended in OPTC's initial Comments, and should adopt the following rule 7(C):

> (C) FOR DECREASES IN RATES, NO ADVANCE NOTICE NEED BE GIVEN. A TELEPHONE COMPANY SHALL PROVIDE NOTICE OF A DECREASE IN RATES TO ITS AFFECTED CUSTOMERS, THE COMMISSION, AND OCC BY NO LATER THAN THE EFFECTIVE DATE OF THE DECREASE.

Proposed rules 7(C), (D), (E) and (F) would then be relabeled 7(D), (E), (F) and (G), respectively, and would have the changes proposed in OPTC's initial Comments.

AT&T asserts that the application of this rule should be limited to telecommunications services.[67] Yet new R.C. 4927.17(A) does not include that limitation; the statute requires that affected customers receive at least fifteen days' notice of "**any** material change in the rates, terms, and conditions of a service and **any** change in the company's operations that are not transparent to customers and may impact service." (Emphasis added.) AT&T's recommendation contravenes new R.C. 4927.17(A), and thus should be rejected.

AT&T also substantially confuses both divisions (A) and (B) of this rule, by asserting that both require only fifteen days advance notice, and that both allow the notice to be given either at the time it is given to customers or at the time of filing with the Commission.[68] But only division (A) allows the notice to be at least fifteen days, while division (B) explicitly requires thirty-day notice; and only division (B) allows notice to be coincident with the filing, while division (A) does not mention filing. AT&T's objection should be rejected on this ground as well.

[67] AT&T Comments at 8.

[68] Id. at 9.

Finally, CBT points out that in a number of the rules, notice to OCC is required for all services, not just residential services.[69] OCC need not be provided notices regarding changes in non-residential services, changes in company operations that do not impact residential customers, abandonment or withdrawal of non-residential services, and increases ("upward alterations") to non-residential BLES rates.

Proposed rule 7(C). This proposed rule requires that all customer notices include the name of the company. OTA proposes that the rule allow the company to use its trade name or "doing business as" ("d/b/a") name instead of the company name.[70] OTA's proposal is reasonable insofar as the name used by the company is the brand name familiar to the customer. For example, customers might recognize the brand name "AT&T" or the d/b/a "AT&T Ohio," but might not be familiar with "The Ohio Bell Telephone Company" because the latter name is not often used in advertising or in communications with customers. In addition, as discussed above in Section I, AT&T has numerous subsidiaries with different brand names and d/b/a names, most of which may be unfamiliar to the customer who is receiving the notice.

If the Commission modifies the proposed rule, as OTA suggests, the Commission should ensure that the notice contains the brand name that the customer receiving the notice would readily recognize as his or her telephone company. This would help to avoid confusion for customers.

[69] CBT Comments at 2.

[70] OTA Comments at 4 and Attachment at 6.

Proposed rule 7(G). OCTA argues that the rules should require "re-notice" to customers if the notice is found not to comply with Title 49, not just the Commission's rules.[71] The Commission should adopt OCTA's proposal.

Rule 4901:1-6-08 Telephone company certification

OCTA states that some ILECs have historically required competitive service providers to be certificated as local exchange carriers before negotiating or entering into interconnection agreements, even though federal law does not require state certification for interconnection.[72] OCTA argues for a rule reflecting that providers of services (e.g., broadband, voice over Internet protocol) not required to be certified by the PUCO have no obligation to obtain certification in order to negotiate or to enter into an interconnection agreement with an ILEC.[73] OCTA proposes adding the following language as rule 8(J):

> If a provider of telecommunications services is not required to obtain a certificate from the commission in order to provide services in this state pursuant to this rule, neither the commission nor any ILEC or CLEC shall impose a requirement of proof of or certification on the provider solely for the purpose to commence negotiations for or enter into an interconnection agreement with the provider.[74]

The Commission should prohibit unreasonable obligations imposed by one carrier on another carrier before negotiating or entering into an interconnection agreement. OCTA's proposal, however, would limit the Commission's discretion under 47 U.S.C. § 251(d)(3). That law provides:

[71] OCTA Comments at 5-6.

[72] Id. at 6.

[73] Id.

[74] Id. at 7.

> In prescribing and enforcing regulations to implement the requirements of this section, the [Federal Communications] Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that -
>
> (A) establishes access and interconnection obligations of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

The PUCO may, at some point or under some circumstances, deem it necessary for a telecommunications provider to obtain PUCO certification in order to interconnect with an ILEC or a CLEC.

OPTC therefore recommends that the Commission adopt OCTA's proposed language, with one change. The phrase "neither the commission nor any" should be replaced with the word "no," so that the rule would read "no ILEC or CLEC shall impose…."

Rule 4901:1-6-10 Competitive emergency services telecommunications carrier certification

Proposed rule 10(B)(2). AT&T, OTA and OCTA propose that the phrase "telephone company" be changed to "CESTC." OPTC has no objection to this change.

Rule 4901:1-6-11 Tariffed services

Proposed rule 11(A)(1). OCTA suggests substituting "CESTC" for "telecommunications carrier" in this rule.[75] Instead, the Commission should *add* CESTC to this rule, with the change proposed in OPTC's initial Comments, as follows:

> The rates, terms, and conditions for 9-1-1 service provided in this state by a telephone company ~~or,~~ a telecommunications carrier, OR A COMPETITIVE EMERGENCY SERVICES TELECOMMUNICATIONS CARRIER, and each of the following provided by a telephone company shall be approved and tariffed by the commission and shall be subject to all the applicable laws, including rules or regulations adopted and orders issued by the commission or the federal communications commission ~~(FCC)~~ and, including, as to 9-1-1 service, sections 4931.40 to 4931.70 and 4931.99 of the Revised Code:. . . .

Proposed rule 11(A)(1)(g). AT&T and OTA both suggest deleting the reference to excess construction charges from this rule.[76] As is further explained infra under proposed rule 33, Commission rules regarding excess construction charges for BLES are completely appropriate given the directive of new R.C. 4927.11(A). The tariffing requirement for excess construction charges should remain in proposed rule 11(A)(1)(g).

Rule 4901:1-6-12 Service requirements for BLES

OCTA asserts that because this "proposed rule references LECs providing BLES [it] could leave the impression that such provisioning is required."[77] As with AT&T's worry that mentioning ETC status in the wireless context implies that wireless carriers are required to offer Lifeline,[78] OCTA's concern is overblown, and its change to this rule is unnecessary. Indeed, OCTA's proposed edit leaves the impression that an ILEC may

[75] OCTA Comments at 7-8.

[76] AT&T Comments at 11; OTA Comments at 4 and Attachment at 11.

[77] OCTA Comments at 8.

[78] See discussion under rule 2(B), supra.

"choose" to provide BLES, which would be far more dangerous than the "impression" imagined by OCTA.

Proposed rules 12(C)(2) and 12(C)(6). OTA proposes to add "natural disasters" to the exceptions allowed by the proposed rules.[79] As explained in OPTC's initial Comments,[80] and in Section I of these Reply Comments, the statute explicitly prohibits the Commission from creating any rules for BLES in addition to those in the statute.[81] That includes creating exceptions. The Commission should reject OTA's suggestion.

Proposed rule 12(C)(5). OTA and CBT both propose another improper addition to the statute, by proposing to limit the credits required by new R.C. 4927.08(B)(3)(a) for outages of more than seventy-two hours just to BLES customers – and not all the customers affected by the outage.[82] With regard to every other provision of new R.C. 4927.08(B), the General Assembly was careful to specify that the impact was on BLES customers only. So it is explicit that **BLES** is to be installed within five business days[83]; a **BLES** outage is to be repaired within seventy-two hours[84]; **BLES** bills cannot be due sooner than fourteen days after the postmark of the bill[85]; **BLES** cannot be disconnected for nonpayment with less than seven days notice[86]; limits are imposed on deposits for

[79] OTA Comments at 5.

[80] OPTC Comments at 21-22.

[81] New R.C. 4927.08(B).

[82] OTA Comments at 5 and Attachment at 13, CBT Comments at 3.

[83] New R.C. 4927.08(B)(1).

[84] New R.C. 4927.08(B)(2).

[85] New R.C. 4927.08(B)(4).

[86] New R.C. 4927.08(B)(5).

BLES[87]; and reconnection of **BLES** is required on the same business day as payment in full or the first payment on a payment arrangement.[88]

But the new law states that where a BLES outage lasts more than seventy-two hours, "the telephone company shall credit **every affected customer** of which the telephone company is aware, in the amount of one month's charges for basic local exchange service."[89] The law does not specify that credits be provided only to BLES customers. Thus the law requires that if a non-BLES customer is affected by a BLES outage, that customer is to be given a credit in an amount equal to one month's charges for the ILEC's BLES. OTA's and CBT's addition to the rule should be rejected.

Proposed rule 12(C)(10). Under this proposed rule, disconnection notices would be required to "identify the minimum dollar amount to be paid to maintain BLES…." AT&T, OTA and CBT assert that this language is not required by Sub. S.B. 162.[90] Although the language is not in the statute, it is logical to assume that telephone companies – who have complained for years about loss of access lines – would be interested in retaining customers, and informing them of their options for staying connected to the network.

There may be LECs that would allow customers to maintain BLES by paying less than the amount owed. The Commission's rules should not discourage such LECs from conveying to customers the various options for maintaining service. The most recent MTSS required disconnection notices to include "[t]he minimum dollar amount necessary

[87] New R.C. 4927.08(B)(6).

[88] New R.C. 4927.08(B)(7).

[89] New R.C. 4927.08(B)(3)(a).

[90] AT&T Comments at 12-13; OTA Comments at 5; CBT Comments at 3.

to maintain basic local exchange service, **if applicable**."[91] In order to make the language consistent with the statute, the Commission should insert "if applicable" after "to maintain BLES" in this rule.

On another issue, Verizon argues that the Commission should not include in the rules "mandatory language" for informing customers how to contact the PUCO and OCC.[92] Contrary to Verizon's argument, the specifics of the contact information should not be "left to the discretion of the local exchange carrier" even if the LEC conveys, as Verizon puts it, "pertinent information…."[93] It would not take too much to imagine a LEC making it difficult for customers to contact the Commission or OCC by, for example, requiring a customer to call the LEC to get PUCO and OCC contact information. The language in this proposed rule has been used for many years, and Verizon has not shown any need (much less a compelling reason) to discard it.

Rule 4901:1-6-14 BLES pricing parameters

Proposed rule 14(B)(3). AT&T claims that "[i]n the case of residential service, the presence of two or more lines precludes either one from being BLES, by definition."[94] This is simply wrong. Of course a residential customer can subscribe to BLES service for one line and another type of service for a second line. The fact that a residential customer may have two lines does not make those a bundle of services if they are priced individually, and does not make the first line "non-BLES."

[91] Ohio Adm. Code 4901:1-5-10(F)(4) (emphasis added).

[92] Verizon Comments at 1.

[93] Id.

[94] AT&T Comments at 13.

AT&T would also remove the phrase "or equivalent" from this rule, without explaining why.[95] This should not be done, however, because not all companies will likely have the same name for the "network access component." On the other hand, AT&T's suggestion to include language to clarify that the rule applies only to the monthly recurring rates for BLES is correct.

The language of proposed rule 14(B)(3) should read:

> The BLES pricing flexibility set forth in this rule is ~~only~~ applicable ONLY to the MONTHLY RECURRING RATE FOR THE network access line component or equivalent of a ~~primary~~ SINGLE BLES line.

Proposed rule 14(C)(1). AT&T believes this rule's requirement that OCC be notified of BLES rate increases, along with the Commission and affected customers, goes beyond the statute.[96] As pointed out in these Reply Comments under proposed rule 7, however, new R.C. 4927.17(B) requires OCC's contact information to appear on all residential telephone company bills and disconnect notices. This requirement would not be in the new law if it were not anticipated that residential customers would call OCC about the rates, terms and conditions of residential service. AT&T's objection should be rejected.

CBT suggests that the OCC notification requirement in this rule and proposed rule (G)(3) should be limited to notices regarding residential services, not business services.[97] OPTC agrees that this limitation is appropriate. CBT's proposed new language for both (C)(1) and (G)(3) should be adopted.

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[95] Id. at 14.

[96] Id.

[97] CBT Comments at 4.

Proposed rule 14(F)(2). AT&T proposes new language to remove the requirement for annual BLES tariff filings.[98] AT&T's proposal to add the phrase "in a manner agreed upon between the ILEC and the commission staff"[99] would allow for a non-public process for the filing of BLES tariffs and is neither necessary nor appropriate. This proposed rule seeks to ensure up-to-date tariffs reflecting both the actual rate for BLES and the cap for BLES rates in exchanges where an ILEC has received BLES pricing flexibility under the rules. This can be accomplished by wording proposed rule F(2) as follows:

> A for-profit ILEC'S TARIFF, IN THOSE EXCHANGE AREAS WITH BLES PRICING FLEXIBILITY, shall INCLUDE THE ACTUAL BLES RATE AND THE ~~establish or maintain a tariffed~~ cap for BLES consistent with paragraphs (C)(1)(a)(2), (C)(1)(b), and (C)(1)(c)(2) of this rule~~.~~ ~~Such ILECs shall file annual changes to its tariffed cap for BLES, in those exhange areas with BLES pricing flexibility~~, AND SHALL BE FILED as a zero-day tariff amendment (ZTA).

Under this proposed language, to the extent an ILEC with pricing flexibility for BLES in a given exchange increases its rates on the annual basis allowed by the rules, it would accordingly be required to update its tariffs every 12 months.

Proposed rules 14(I) and 14(J). AT&T and OTA complain the Commission has exceeded its authority by including a standard of reasonableness applicable to BLES late payment charges and by capping BLES installation and reconnection fees.[100] CBT makes a similar argument regarding installation and reconnection fees.[101] None of these commenters recognize the plain language of new R.C. 4927.12(F), which states: "The

[98] AT&T Comments at 15.

[99] Id.

[100] AT&T Comments at 16; OTA Comments at 5.

[101] CBT Comments at 4.

rates, terms, and conditions for basic local exchange service and for installation and reconnection fees for basic local exchange service shall be tariffed in the manner prescribed by rule adopted by the commission." Applying a standard of reasonableness to BLES late payment charges, which are part of the terms and conditions of BLES, and capping BLES installation and reconnection fees, are both within the Commission's authority under new R.C. 4927.12(F).

As an additional argument against adoption of these two proposed rules, AT&T and OTA complain that all services are subject to late payment charges.[102] OTA makes the same argument regarding installation and reconnection charges.[103] AT&T and CBT assert that market forces should be relied on to maintain reasonable rates for installation and reconnection fees.[104] These arguments are not persuasive, however, because the law goes to great lengths to protect BLES customers, in particular because they are the customers least likely to have alternatives to the ILEC's BLES available. To exclude safeguards for two fundamental aspects of BLES from the rules would ignore the intent to protect BLES. These two rules should be adopted as proposed.

Rule 4901:1-6-15 Directory information

Sub. S.B. 162 requires that, as part of BLES, telephone companies provide "a telephone directory in any reasonable format for no additional charge and a listing in that

[102] AT&T Comments at 16; OTA Comments at 5.

[103] OTA Comments at 5.

[104] AT&T Comments at 15-16; CBT Comments at 4.

directory, with reasonable accommodations made for private listings…."[105] To implement this provision, proposed rule 15 provides the following:

> (A) A local exchange carrier (LEC) providing basic local exchange service (BLES) shall make available to its customers at no additional charge a telephone directory in any reasonable format, including but not limited to a printed directory, an electronic directory accessible on the internet or available on a computer disc, or free directory assistance. The telephone directory shall include all published telephone numbers in current use within the ILEC's local calling area, including numbers for an emergency such as 9-1-1, the local police, the state highway patrol, the county sheriff and fire departments, the Ohio relay service, operator service, and directory assistance.
>
> (B) A LEC providing BLES shall offer BLES customers the option to have a printed directory at no additional charge. In lieu of automatically delivering printed residential white pages directories, a LEC providing BLES may provide a toll-free telephone number for customers to request a free printed residential white pages directory or make available directories in places frequented by the public, such as grocery stores, pharmacies, or banks.
>
> (C) A LEC providing BLES shall also provide its customers with a listing in that directory, with reasonable accommodations made for private listings.

In their comments, AT&T, CBT and OTA raised objections to various portions of this proposed rule. AT&T asserts that Sub. S.B. 162 did not "specify the required geographic scope or the contents of the telephone directory, direct the availability of free directory assistance in any circumstance, or require that a printed directory be provided to any customer." [106] AT&T calls for the Commission not to adopt "[t]he <u>two</u> proposed

[105] New R.C. 4927.01(A)(1)(b)(vi).

[106] AT&T Comments at 16.

provisions,"[107] although it is unclear to which two provisions AT&T refers, since the company specifically mentions only paragraph (A).[108]

CBT alleges that Sub. S.B. 162 "does not require companies to continue to provide printed directories nor require companies to include information other than listings in the directory."[109] CBT suggests deleting paragraph (A) after the phrase "reasonable format," and all of paragraph (B).[110] Like AT&T, CBT would retain paragraph (C).[111]

OTA would delete all three paragraphs and replace them with the following sentence: "A local exchange carrier (LEC) providing basic local exchange service (BLES) shall provide a telephone directory in any reasonable format at no additional charge and a listing in that directory, with reasonable accommodation made for private listings."[112] OTA asserts that the sentence "clearly and concisely captures the legislative intent."[113]

The telephone companies are wrong. Except for the availability of a printed directory upon customer request, the proposed rule does not specify that a directory be offered in a particular format. As for the printed directory, the Commission may reasonably require that telephone companies make a printed directory available to

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[107] Id. at 17 (emphasis added).

[108] Id. at 16. AT&T also asks the Commission to clarify that the intent of paragraph (C) of the rule "was to continue the status quo on private and semi-private listings (sometimes referred to as 'non-published' and 'unlisted' numbers), but with no pricing restrictions." Id. at 17. Here again, AT&T looks to the status quo when convenient, but rejects it when it is not.

[109] CBT Comments at 5.

[110] Id.

[111] See id.

[112] OTA Comments at 5-6 and Attachment at 17.

[113] Id. at 6.

customers upon request, given the fact that not every home has a computer or access to high-speed broadband service that make electronic directories available to consumers. And the requirement in paragraph (A) that directories include all published numbers and information regarding emergency services and operator access furthers public safety and welfare. It is disappointing that the companies object to providing this information. The Commission should adopt the rule, with the changes suggested in OPTC's initial Comments.

Rule 4901:1-6-16 Unfair or deceptive acts or practices

Proposed rule 16(B). This rule states that a telephone company's failure to comply with any of the requirements listed in proposed rules (B)(1) through (B)(5) "shall constitute an unfair or deceptive act or practice…." CBT claims that the proposed rule "could be interpreted to apply to any services offered by a telephone company rather than being limited to telecommunications services as clearly stated in Section 4927.06(A) of Substitute Senate Bill 162."[114] CBT would limit application of the rule to telecommunications services under the PUCO's jurisdiction.[115] CBT is wrong in its interpretation of Sub. S.B. 162.

New R.C. 4927.06(B) states: "No telephone company shall commit any unfair or deceptive act or practice in connection with the offering or provision of **any** telecommunications service in this state." (Emphasis added.) The provision does not

[114] CBT Comments at 7.

[115] Id.

apply to only those services within the Commission's jurisdiction; it applies to **all** telecommunications services.

CBT's proposed language would unnecessarily limit the Commission's authority under Sub. S.B. 162. The Commission should reject CBT's suggestion.

Proposed rule 16(B)(1). AT&T asserts that the proposed rule adds requirements that are not included in or contemplated by the statute.[116] AT&T would have the Commission limit the rule to the acts and practices specified in new R.C. 4927.06(A)(1)-(3), and to specify other acts and practices based on future experience.[117] AT&T's view is wrong, however.

Nothing in the statute requires such a limitation in the rules. To the contrary, new R.C. 4927.06(A)(4) specifically states: "The company shall not commit any act, practice, or omission that the commission determines, **by rulemaking under section 4927.03 of the Revised Code** or adjudication under section 4927.21 of the Revised Code, constitutes an unfair or deceptive act or practice in connection with the offering or provision of telecommunications service in this state." (Emphasis added.) New R.C. 4927.03(E) requires the Commission to conduct the instant rulemaking. Thus, Sub. S.B. 162 appears to specifically authorize the Commission to determine – in *this* rulemaking –acts, practices and omissions that are unfair or deceptive, other than those specified in the statute.[118]

[116] AT&T Comments at 18.

[117] Id. at 19.

[118] The authority to identify unjust and unreasonable practices would not end, however, with the present rulemaking.

In addition, it is good public policy. Having specific standards will create some level of predictability and would allow telephone companies to avoid being unprepared for a Commission determination that a practice is unfair.

Proposed rule 16(B)(1)(b). Both AT&T and CBT object to the requirement in proposed rule (B)(1)(b) that material exclusions, reservations, limitations, modifications, or conditions must be identified "in close proximity to the operative words in the solicitation, offer, or marketing materials." AT&T claims that the requirement "impermissibly adds to the statutory requirements."[119] This is not true. The statute requires disclosures to be "conspicuous"; requiring material terms and conditions of an offer to be in close proximity to the offer provides some definition of this statutory term.

CBT also claims that the proposed rule "goes beyond" the requirements found in the Consumer Sales Practices Act ("CSPA").[120] Not only is CBT wrong in its assertion, it overlooks the nature of this rulemaking. The Commission is not implementing the CSPA. Although the requirements in new R.C. 4927.06(A)(1)-(3) are similar to CSPA requirements, the requirements are not the same. Thus, although the Commission may look to CSPA principles for guidance, it is not constrained by the enforcement of the CSPA in promulgating its own rules. The Commission should reject CBT's argument.

Proposed rule 16(B)(4). This rule requires telephone companies to provide customers with information regarding the use of the Network Interface Device ("NID") and to inform customers about charges for a diagnostic visit. The proposed rule also

[119] Id. at 18.

[120] CBT Comments at 6-7 (footnote omitted).

requires telephone companies to visit the customer's premises at no charge to determine whether the problem is with the network or with the customer's inside wiring.

AT&T complains that the proposed rule goes beyond the PUCO's authority over the NID. AT&T asserts that Sub. S.B. 162 "does not regulate diagnostic visit charges and does not give the Commission the authority to do so, or to specify circumstances where those charges are waived, even as to BLES."[121] But AT&T ignores that new R.C. 4927.06(A)(4) authorizes the Commission to determine by rulemaking practices that are "unfair." The proposed rule does exactly that.

The Commission has recognized the potential for problems on the LEC's side of the network and the need to ensure that customers receive proper information regarding their responsibilities for diagnostic testing.[122] The proposed rule affirms that it is unfair for telephone companies to inadequately inform customers about the processes and costs associated with diagnostic testing. The Commission should adopt the proposed rule.

Proposed rule 16(D). This proposed rule requires telephone companies to make available, upon request, a copy of their credit and deposit policies to any applicant or customer, in any reasonable format and at no charge. AT&T and OTA argue that the proposed rule should be deleted in its entirety because the Commission made the requirement in Ohio Adm. Code 4901:1-17 ("Chapter 17") no longer applicable to telephone companies in the latest revision of the PUCO's credit and deposit rules.[123]

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[121] AT&T Comments at 18.

[122] See *In the Matter of the Commission's Investigation into the Detariffing of the Installation and Maintenance of Simple and Complex Inside Wire*, Case No. 86-927-TP-COI, Entry on Rehearing (November 23, 1994) at 10.

[123] AT&T Comments at 18-19, citing *In the Matter of the Commission's Review of Chapters 4901:1-17 and 4901:1-18, and Rules 4901:1-5-07, 4901:1-10-22, 4901:1-13-11, 4901:1-15-17, 4901:1-21-14, and 4901:1-29-12 of the Ohio Administrative Code*, Case No. 08-723-AU-ORD, Finding and Order (December 17, 2008) ("08-723 Order") at 5; OTA Comments at 6.

Both, however, ignore that in removing the Chapter 17 requirement from telecommunications providers, the Commission relied on similar provisions in the MTSS to protect consumers. AT&T also asserts that the rule is beyond the scope of the Commission's statutory authority.[124]

In the 08-723 Order, the Commission noted AT&T's assertion that the credit and deposit requirements in Chapter 17 were "over and above" the MTSS requirements and that the company should be subject to less regulation than having to meet the requirements of two rules.[125] The Commission also observed that AT&T, OTA and CBT argued that having to comply with Chapter 17 would put telephone companies at a competitive disadvantage, because the rules were not applicable to such companies as wireless companies and voice over Internet protocol providers.[126]

The Commission determined that telecommunications providers should not be subject to the Chapter 17 rules, but only because of the similar provisions in the MTSS:

> The MTSS are tailored specifically for telecommunications providers and already provide sufficient protections to ensure that customers are subject to reasonable and nondiscriminatory credit practices when establishing and reestablishing service. Accordingly, in order to avoid confusion and potentially conflicting requirements, the Commission agrees with the telecommunications providers that the MTSS should be the only requirements governing the credit practices of telecommunications providers.[127]

But because the Commission can no longer enforce the credit and deposit provisions of the MTSS, the reason for exempting telecommunications providers from the

[124] AT&T Comments at 18.

[125] 08-723 Order at 4.

[126] Id. at 4-5.

[127] Id. at 5.

requirements of Chapter 17 has disappeared, while the need to ensure reasonable and nondiscriminatory credit practices by telecommunications providers remains.

The Commission should thus provide sufficient protections to ensure that customers are subject to reasonable and nondiscriminatory credit practices when establishing and reestablishing service. As discussed earlier, new R.C. 4927.06(A)(4) authorizes the Commission to determine, by rulemaking, practices that are unfair or deceptive. The Commission has the statutory authority to apply the requirements found in proposed rule 16(D) to telephone companies.

Verizon also argues for rejection of the proposed rule, based on a variety of factors ranging from the need to protect proprietary business information, to the use of credit scores, to the need for occasionally changing policies, to protections already available through the Fair Credit Reporting Act.[128] Verizon, however, is making the issue much more complex than it needs to be. Prior to Sub. S.B. 162, telephone companies were required to provide their credit and deposit policies to consumers under the MTSS. The proposed rule is merely a continuation of that requirement. The Commission should reject Verizon's arguments.

CBT's only apparent problem with the proposed rule is with the term "any reasonable format."[129] CBT asks the Commission to clarify that the proposed rule would not "allow the customer to request a format that is not readily available or that would be unduly burdensome for the carrier to produce for a single customer."[130] In order to clarify the rule, "CBT recommends that 'any reasonable format' be changed to 'an alternative

[128] Verizon Comments at 2-3.

[129] CBT Comments at 7.

[130] Id.

format or alternate mode' in keeping with the Federal Communications Commission's rules related to making end-user documentation accessible."[131] CBT's proposed change, however, would not make the proposed rule any clearer, because the terms "alternative format" and "alternative mode" are undefined.

In addition, CBT's suggestion would allow telephone companies too much discretion in how their credit and deposit policies are provided to consumers and would allow telephone companies to make their credit and deposit policies available in a format that customers could not use. For example, a telephone company might choose to make its policies available only on its website, even though Internet access may not be readily available to a majority of the company's customers.[132] The rule is meant to ensure that consumers have access to their telephone company's credit and deposit policies. The focus of the rule should be on ensuring that the vast majority of a company's customers can access the company's credit and deposit policies; the focus should not be on having companies avoid dealing with the occasional request that require extra effort to fulfill.

The Commission should reject the suggestions made by AT&T, Verizon, OTA and CBT. Instead, the Commission should adopt the rule with the changes recommended in OPTC's Comments.

Proposed rules 16(E) and 16(F). AT&T argues that these proposed rules "simply repeat federal requirements and are, therefore, not necessary."[133] Verizon also asserts that the rule is redundant insofar that it ensures companies' compliance with federal law, and

[131] Id., citing 47 U.S.C. § 255 and 47 C.F.R. §§ 6.1-6.23.

[132] According to ConnectOhio, more than 50% of Ohioans do not subscribe to broadband. See http://www.connectohio.org/_documents/ohio_media_kit_p5.pdf.

[133] AT&T Comments at 19.

is inappropriate insofar that it seeks to impose requirements not applicable to companies that do not issue credit reports. But the rules benefit consumers by making available a state complaint process through the PUCO, rather than forcing consumers to file a complaint with a federal agency. And, like proposed rule (D), the proposed rules (E) and (F) are merely continuations of rules defining fair practices that have been applicable to telephone companies for years. The Commission should reject AT&T's position and adopt the rule as proposed by the PUCO Staff.

Rule 4901:1-6-19 Lifeline requirements

Proposed rule 19(D). OTA and CBT assert that the requirement that ILECs make payment arrangements with Lifeline customers should be limited to once per year.[134] CBT says its current practice is to limit Lifeline customers to one payment arrangement per year.[135]

Notably, no such limitation is contained in the new statute.[136] The OTA/CBT proposal must be rejected.[137]

Proposed rule 19(F). AT&T has two complaints about the rule establishing the statewide Lifeline advisory board. First, according to AT&T, PUCO Staff "has the

[134] OTA Comments at 6 and Attachment at 20, CBT Comments at 7-8.

[135] CBT Comments at 8.

[136] New R.C. 4927.13(A)(2).

[137] The Lifeline program should not be restricted in this fashion, in order to avoid limiting one of the few consumer benefits contained in the new law. As another example, OCC has received complaints from AT&T Lifeline customers who found themselves unable to make the initial down payment on a payment arrangement. It appears that AT&T considered this to be a broken payment arrangement, even though the customer's service was never reconnected. Based on this, if the customer tried again to establish a special payment arrangement, AT&T would deny them this option for a 12-month period. Under both the old rules but especially under the new statute, the Lifeline payment arrangement should not be considered to have started until the initial down payment has been received by the Company.

power to 'make the final determination' in matters addressed" by the board if consensus among the board members is not possible.[138] AT&T says this is inconsistent with Sub. S.B. 162, "which gives the Commission (and not its Staff) the power to review and approve decisions of the advisory board."[139] But AT&T ignores language appearing later in that same rule, which, in fact, states that the "commission may review and approve decisions of the advisory board."[140] The PUCO Staff's decisions are intended to be final among the members of the board, but members may seek a **final** determination from the Commission.[141]

AT&T also objects to the rule's inclusion of the "assistance of" OCC "in a manner not contemplated in the Act."[142] AT&T says that "the offending provision should be deleted."[143] A restrained response to this ridiculous argument would be to point out that OCC is the sole member of all of the current ILEC-specific Lifeline advisory boards other than the Staff, as well as the only other state agency. As such, OCC is familiar with the workings of all the existing (company-specific) Lifeline advisory boards, and is well-equipped to assist Staff in the formation of a unified, statewide advisory board.

It is within the Commission's discretion to include OCC's assistance in this rule. AT&T's complaint should be rejected.

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[138] AT&T Comments at 20, quoting Proposed Rule 19(F).

[139] Id.

[140] Last sentence of rule 19(F).

[141] OPTC proposed changes to this rule to make it clear that **all** decisions of the board are subject to Commission review, and that the Commission may approve **or disapprove** board decisions. OPTC Comments at 30 and Appendix at 22.

[142] AT&T Comments at 20.

[143] Id.

Proposed rule 19(S). OTA says that the rule improperly includes the Lifeline subscription report – required by new R.C. 4927.13(E) – in the annual assessment report required by new R.C. 4905.14(A)(2).[144] On its face, this simply seems more efficient, but if OTA's members would rather file two separate reports than a single report, that appears to be their choice.

AT&T, on the other hand, objects to the rule's provision that PUCO Staff be able to "seek additional information regarding customer subscription to and disconnection of lifeline service,"[145] arguing that this "appears to expand the ability of Staff to request data related to Lifeline service that goes well beyond the requirements of the Act."[146] This goes back to AT&T's unreasonably constricted view of the Commission's investigative powers in the wake of Sub. S.B. 162.[147]

CBT also opposes this provision, because of the supposed cost of providing the information to PUCO Staff.[148] It is absurd to think that unsupported allegations of the cost of compliance should prevent the PUCO Staff from investigating the circumstances of this assistance program, which is created and largely funded under federal law, and expanded and funded by Ohio consumers under the new statute. This provision should stay in the rules.

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[144] OTA Comments at 6.

[145] Rule 19(S)

[146] AT&T Comments at 21.

[147] See Section I., supra.

[148] CBT Comments at 8. CBT erroneously states that the Commission granted a waiver under the current rules "to allow ILECs to sell additional features to Lifeline customers…." Id. Actually, the Commission granted a waiver to AT&T, which never complained about the reporting costs, and to Embarq, which never used it. But one would expect that this information – particularly the number of Lifeline customers who subscribed to service packages, and the number of those customers who were disconnected for non-payment – would be precisely the sort of information that a competitive business would want to know.

Rule 4901:1-6-20 Discounts for persons with communications disabilities

AT&T proposes that the Commission "should consider instituting another proceeding" to review the need for this rule,[149] which provides benefits for persons with communications disabilities. In this one respect, AT&T is not entirely wrong.

New R.C. 4927.03(E) directs that only the rules **required** by Sub. S.B. 162 be completed in this cycle. It would be better for the Commission to solicit "comments on the prospective need for such discounts from the user community, the affected telephone companies, and other interested parties"[150] than to accept AT&T's alternative proposal – in which CBT joins[151] – to eliminate these discounts for the communicatively impaired.[152] These positions make the Grinch and Scrooge – before their conversions – look like philanthropists.[153]

AT&T, CBT and OTA do appear a bit more moderate by suggesting that if the Commission retains this rule, it should include all three options available under the current rule.[154] But then the appearance vanishes when they say that those with communications disabilities should not receive free directory assistance.[155] The end result is to deny free directory assistance to those with communication disabilities, whether it is because telephone companies are not required to provide directory

[149] AT&T Comments at 21.

[150] Id

[151] CBT Comments at 9.

[152] Id.

[153] CBT is also apparently unaware of new R.C. 4927.14.

[154] AT&T Comments at 21; CBT Comments at 10; OTA Comments at 6-7 and Attachment at 24.

[155] AT&T Comments at 22; CBT Comments at 9; OTA Comments at 7.

assistance[156] or because it represents "Commission regulation of directory assistance pricing."[157] The Commission should reject the suggestion offered by AT&T, CBT and OTA.

Rule 4901:1-6-22 Alternative operator service and inmate operator service

Both OTA and AT&T suggest changes regarding the proposed rules for AOS. OTA claims that the Commission has no authority over AOS under Sub. S.B. 162, and thus recommends deleting proposed rules (A) and (B) in their entirety.[158] AT&T, on the other hand, recognizes that the Commission at least has authority over "prohibitions against unfair or deceptive acts or practices, consistent with its authority over telecommunications services generally…."[159] Nevertheless, AT&T also asks the Commission to delete all provisions regarding AOS.[160]

OTA and AT&T appear to be correct regarding the price restrictions in the proposed rules. But, as AT&T noted, the Commission may prohibit unfair or deceptive acts or practices of telephone companies in Ohio.[161] Sub. S.B. 162 defines "telephone company" as any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, that is

[156] AT&T Comments at 22; OTA Comments at 7. Notably, the rule states merely that **if** a company offers directory assistance to customers, it should be free to the communicatively disable.

[157] CBT Comments at 9. It must be pointed out that all discounts such as those allowed by new R.C. 4927.14 represent, in a fashion, regulation of pricing.

[158] OTA Comments at 7 and Attachment at 24-26.

[159] AT&T Comments at 23.

[160] Id.

[161] See new R.C. 4927.06(A).

"engaged in the business of transmitting telephonic messages to, from, through, or in this state…."[162] Because AOS providers are "engaged in the business of transmitting telephonic messages to, from, through, or in this state," they are telephone companies and the Commission may prohibit them from committing unfair or deceptive acts or practices under new 4927.06(A).

Several provisions in proposed rule 22(B) are essential to the Commission's regulatory function. It would be unfair of AOS providers to refuse to inform, or to not properly notify, the billed party of all the charges involved in the call, especially any backhaul charges or surcharges that might be imposed by the owner of the telephone instrument.[163] It would also be unfair of AOS providers to charge for uncompleted calls or to refuse callers access to all telecommunications providers.[164] In addition, to further its regulatory function, the Commission should be able to require that AOS contracts do not prohibit AOS providers from taking the steps necessary to comply with PUCO rules,[165] and the PUCO Staff should be allowed access to AOS providers' records, as part of its investigatory function.[166]

If the Commission determines that it has no authority over AOS rates, the Commission should delete proposed rules 22(A) and (B), except for proposed rules (B)(1)(b), (B)(1)(f) and (B)(1)(j). The rule would then read as follows, with the amendments previously proposed by OPTC:

(A) AOS parameters

[162] See new R.C. 4905.03(A)(1).

[163] See Proposed Rules 22(B)(1)(c), (e), (g) and (h).

[164] See Proposed Rules 22(B)(1)(d) and (i).

[165] See Proposed Rule 22(B)(1)(f).

[166] See Proposed Rule 22(B)(1)(j).

(1) Notice of any change in AOS rates, whether upward or downward, must be filed by the AOS provider with the commission in the form of a new pricing list filed in the AOS provider's TRF docket.

(2) Each AOS provider must include in its contract with each of its customers language requiring that the customer permit the AOS provider to take whatever steps are necessary to ensure that the AOS provider complies with all of the established requirements and restrictions pertaining to AOS.

(3) Upon request, each AOS provider must provide, as directed by the commission or its staff, information concerning its operations, including but not limited to, customer lists and call records.

The inmate operator service rules would then be relabeled as (B).

In addition, the following language should be inserted in proposed rule 16:

(G) A FAILURE TO COMPLY WITH ANY OF THE FOLLOWING REQUIREMENTS SHALL CONSTITUTE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE BY AN ALTERNATIVE OPERATOR SERVICE (AOS) PROVIDER:

(~~c~~1) Upon request of the ~~end user~~ CALLER or THE billed party, and at no additional charge, the AOS provider must quote the actual intrastate price list rates for all components of the call to the ~~end user~~ CALLER OR THE BILLED PARTY, INCLUDING ANY BACKHAUL CHARGES AND SURCHARGES IMPOSED BY THE OWNER OF THE TELEPHONE INSTRUMENT USED TO MAKE THE CALL. For live and automated operator-assisted calls, each AOS provider must brand its calls by having its operator identify the name of the AOS provider to the ~~end user~~ CALLER or THE billed party prior to the processing of the calls. After such notification and rate disclosure (if requested), the AOS provider must allow the ~~end user~~ CALLER or THE billed party an opportunity to decide not to utilize the AOS provider's service and reject the call without incurring any charges.

(~~d~~2) AOS providers may not charge ~~end users~~ BILLED PARTIES for uncompleted calls.

(~~e~~3) Each AOS provider must post conspicuous notice on the telephone instrument through which the ~~end user~~ CALLER is placing the call utilizing the following format and language:

Operator services provided to this telephone by: (certified name of the AOS provider).

For information or to lodge a complaint call toll free: (a toll-free number to reach the AOS provider).

(~~i~~4) Each AOS provider must provide to ~~end users~~CALLERS, through the ~~end user's~~ telephone instrument USED BY THE CALLER, access to all telecommunications service providers.

Rule 4901:1-6-23 Pay telephone access lines

Proposed rule 23(A). OTA indicates that it has "revised paragraph (A) to clarify timing of the provisioning of" pay telephone access lines.[167] The "clarification" is that such lines must be installed "within the ILEC's normal installation intervals."[168] This is meaningless, and clarifies nothing.

Rule 4901:1-6-25 Withdrawal of telecommunications services

Proposed rule 25(B)(1). The proposed rule requires CLECs to notify affected customers at least 90 days before discontinuing BLES. CBT states that the proposed rule "does not appear to contemplate that a CLEC withdrawing BLES in an exchange may continue to offer other services within the exchange and that the CLEC's BLES customers may switch to these other services."[169] CBT suggests modification of the proposed rule so that the notice need only be provided to customers "who do not convert

[167] OTA Comments at 7; see also CBT Comments at 10.

[168] OTA Comments, Attachment at 27.

[169] CBT Comments at 10.

to another service with the CLEC…."[170] CBT's suggestion does not make sense, however.

The notice requirement applies only to "affected" customers, i.e., those customers of the CLEC who subscribe to BLES. Thus, the notice must be provided to customers who subscribe to BLES on the day the notice is sent, which must be at least 90 days before the CLEC discontinues BLES. Whether a customer may "convert" to another CLEC service afterwards is irrelevant; the customer still must receive the notice while the customer subscribes to BLES. CBT does not explain how a CLEC could predict that a customer would "convert" to another service, and thus avoid the notice requirement. The Commission should reject CBT's proposal.

Proposed rule 25(D). The proposed rule states that the rule does not apply to BLES provided by an ILEC, pole attachments, conduit occupancy and interconnection and resale agreements. OCTA suggests that there should be a distinction between withdrawal of BLES by an ILEC and the carrier of last resort waiver for BLES allowed under proposed rule 27.[171] OCTA, however, does not suggest any language for the rule change.

The change proposed in OPTC's Comments provides the distinction OCTA seeks. Rather than stating that the "rule does not apply" to the listed exceptions, OPTC's proposed language states that "[t]elephone companies may not withdraw" the listed exceptions "under this rule."[172] The Commission should adopt OPTC's suggested language.

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[170] Id.

[171] OCTA Comments at 8-9.

[172] OPTC Comments, Appendix at 31.

Rule 4901:1-6-26 Abandonment

Proposed rule 26(A)(3). This rule requires telephone companies that are abandoning service to give retail and wholesale customers 30 days written notice that it plans to abandon service. The rule provides an exception: No notice is required if the abandoning company has no retail customers.

OCTA recommends that the exception be deleted from the rules because the exception does not mention wholesale customers.[173] OCTA has a point. Under the proposed rule, a carrier that does not have retail customers would not have to notify its wholesale customers that it is planning to abandon service. But instead of eliminating the exception, the Commission should make the exception applicable to carriers that have neither retail nor wholesale customers. The Commission should retain the exception, with this change.

Proposed rule 26(A)(6). This rule states that the abandonment rules do not apply to BLES provided by an ILEC. OCTA points out that although the proposed rules do not apply to an ILEC's BLES, the rules are "silent on how an ILEC might abandon BLES, unless it is through a waiver process."[174]

This proposed rule apparently is meant to amplify new R.C. 4927.07(D), which prohibits ILECs from withdrawing or abandoning BLES.[175] The rule, however, could be stated more directly, in order to further the statute. In order to eliminate any vagueness in

[173] OCTA Comments at 10.

[174] Id. OCTA does not identify the waiver process to which it is referring.

[175] ILECs may avoid their obligation to provide BLES to a particular location only if the owner of the property has an exclusive arrangement for telephone service with another company. See new R.C. 4927.11(B).

the rule, OPTC suggests the following language for the rule: "An incumbent local exchange carrier may not abandon basic local exchange service under this rule."

Proposed rule 26(A)(8). This rule states that "[n]o telephone company may discontinue services provided to an abandoning local exchange carrier (LEC) prior to the effective date that the LEC will abandon service." AT&T asserts that the proposed appears to allow an abandoning carrier to insist on the continuation of service even if it refused to pay for that service.[176] Both AT&T and OTA suggest that the proposed rule not apply in cases of disconnection for non-payment.[177] This suggestion, however, is unfair to the abandoning carrier's customers and conflicts with proposed rule 26(A)(7).

First, the proposed rule is unfair to customers who have paid for service to the abandoning carrier, even though the carrier did not pay the underlying carrier. It is not these customers' fault if the abandoning carrier is delinquent on its payments, and yet the customers' would suffer the loss of their service. Further, the underlying carrier has legal options for getting payments from the abandoning carrier that may not be available to consumers; the underlying carrier should pursue those options instead of cutting off service to consumers who have paid the abandoning carrier for service.

Second, proposed rule 26(A)(7) prohibits the abandoning telephone company from discontinuing services to its customers until the abandonment application has been approved by the Commission. The proposed rule helps to ensure that consumers receive the service they have paid for while they make arrangements to change carriers. If the underlying carrier is allowed to disconnect the abandoning carrier, however, the

[176] AT&T Comments at 24.

[177] Id.; OTA Comments, Attachment at 30.

abandoning carrier's customers would not have the benefit of the 30-day notice period in proposed rule 26(A)(3) in order to change carriers.

Allowing an exception to proposed rule 26(A)(8) for nonpayment by the abandoning carrier could harm consumers. The Commission should reject the suggestion offered by AT&T and OTA.

Rule 4901:1-6-27 Provider of last resort

Surprisingly, there were no comments filed on this rule other than OPTC's. This means either that the ILECs do not expect to be requesting waivers of their provider-of-last-resort obligation – which is good news – or that the ILECs are content with the procedures set up by the law and the proposed rules – which is not as good news, but acceptable. The Commission should adopt the rule, with modifications recommended in OPTC's Comments.

Rule 4901:1-6-30 Company records and complaint procedures

Proposed rules 30(A)(1) and 30(A)(2). OTA proposes to insert the word "such" before "records" in order to make the proposed rules applicable only to records required to be maintained pursuant to the Commission's jurisdiction under the new law.[178] This appears to be a minor acceptable change.

Rule 4901:1-6-31 Emergency and outage operations

[178] OTA Comments at 7 and Attachment at 34.

OTA and Verizon propose that LECs be given the option to provide outage reports as required by the draft Commission rule or the FCC's rules[179]; indeed, AT&T says the Commission should require only the FCC reports.[180] Given the tenor of their comments, it is clear that most carriers will likely use the FCC's format. Yet the FCC's concerns on the national level are not identical to Ohio's concerns. This rule need not be modified as the telephone industry suggests.

As to paragraphs (F) and (G), AT&T proposes that the Commission should eliminate these rules, which require facilities-based LECs to develop emergency plans, to submit them to the PUCO Staff,[181] and to adapt those plans based on after-action reports.[182] This is because, according to AT&T, the new law "does not give the Commission the authority to dictate policies governing the telephone companies' emergency operations."[183] Actually, a review of the rule shows that beyond directing the items that must be in such emergency plans (and not dictating what must be in those items), the only thing that this rule dictates is that the plans be amended based on experience with real emergencies. This requirement is hardly excessive regulation that will hobble the LECs in their competitive endeavors. The Commission should reject AT&T's proposal.

Rule 4901:1-6-33 Excess construction charges applicable to certain line extensions for the furnishing of local exchange telephone service

[179] Id.; Verizon Comments at 4-5.

[180] AT&T Comments at 24.

[181] OPTC had recommended that the plans be made available to OCC.

[182] AT&T Comments at 24.

[183] Id. at 25.

AT&T, CBT and OTA all argue that this rule should be eliminated.[184] Their positions appear to be a knee-jerk anti-regulatory argument, however, because nothing in their comments supports that ILECs need the freedom to assess construction charges as they see fit. It is not at all clear how often these days such charges are even assessed.

More importantly, by its specific terms, this rule applies to facilities over which BLES can be provided, as well as the bundles and packages that are outside the BLES definition. If an ILEC is allowed to impose excessive construction charges to provide BLES, the ILEC's duty to provide BLES under new R.C. 4927.11(A) will be undermined. Maintaining that duty is well within the Commission's regulatory purview.[185] The Commission should reject the industry's argument.

Rule 4901:1-6-36 Telecommunication relay services assessment procedures

As OPTC did in our Comments,[186] OTA proposes that "federal regulations" should be included in this rule.[187] The Commission should also adopt OCTA's proposal that the rule be modified to include the possibility that new services will need to be assessed for TRS.[188]

Rule 4901:1-6-37 Assessments and annual reports

[184]Id.; CBT Comments at 11; OTA Comments at 8.

[185] It would be possible to make a distinction in this rule so as to provide protection only to facilities that provide BLES. The distinction must be clearly conveyed to consumers, however, so that they can make the choice as to which service they will request (BLES with reasonable construction charges, or a package with exorbitant construction costs).

[186] OPTC Comments at 39 and Appendix at 40.

[187] OTA Comments at 8 and Attachment at 38.

[188] OCTA Comments at 10-11.

OTA and Verizon both propose changes to this rule so that wireless service providers will only have to "submit," rather than file, their annual reports.[189] Both refer to current practice.[190] But as the carriers often acknowledge, Sub. S.B. 162 wreaked tremendous changes on telecommunications regulation in Ohio. One of those changes is that now telephone companies need file only reports that support the PUCO (and OCC) assessments.[191] And the key provision of R.C. 4905.14 has remained unchanged, stating that "[e]very public utility **shall file** an annual report with the public utilities commission."[192] So mere "submission" would be contrary to the law, and the Commission may not adopt the OTA/Verizon proposal.

OCTA proposes language to clarify the requirements of new R.C. 4905.14(A)(2)(b) addressing data to support pole attachment and conduit occupancy rates.[193] OPTC has no comment on these proposals, other than to note that the view of those who **pay** pole attachment and conduit occupancy rates regarding the information necessary to calculate those rates deserves as much attention as the view of those who charge the rates.

IV. CONCLUSION

The changes described in OPTC's initial Comments and detailed in the appendix thereto, along with the additional changes recommended in these Reply Comments, will

[189] OTA Comments at 8 and Attachment at 39; Verizon Comments at 5.

[190] OTA Comments at 8 and Attachment at 39; Verizon Comments at 5. OTA's solicitousness toward its many wireless members is surely appreciated by those carriers.

[191] See new R.C. 4905.14(A)(2)(a). But it should also be noted that the Commission is directed to "protect any confidential information in every company and provider report." Id.

[192] This is now R.C. 4905.14(A)(1) because of the addition of language that became R.C. 4905.14(A)(2).

help to ensure that consumers receive the full consumer protections and benefits of Sub. S.B. 162. The Commission should adopt the changes recommended by OPTC.

On the other hand, most of the changes recommended by the industry would weaken the few consumer protections and benefits contained in the new law. Those proposals, discussed in these Reply Comments, should be rejected.

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[193] OCTA Comments at 11-12.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Reply Comments* was served by first class United States Mail, postage prepaid, to the persons listed below, on this 30th day of September 2010.

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