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 OF THE AT&T ENTITIES

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Introduction

The AT&T Entities[1] ("AT&T"), by their attorneys, submit these reply comments pursuant to the Entry adopted by the Commission on July 29, 2010 ("Entry") in the captioned case. In that Entry, the Commission sought comment on rules proposed by its Staff to implement the provisions of Sub. S. B. 162 ("the Act"), which took effect on September 13, 2010. Seven parties filed initial comments, comprised of almost 200 pages. In these reply comments, those parties are referred to as AT&T, CBT, OCTA, OTA, OPTC, TWTC, and Verizon.

Despite the purpose of the Act to significantly reduce the regulation of telecommunications services in Ohio, several of the commenting parties would have the Commission improperly increase regulation, with its associated costs and burdens, through this rulemaking. As AT&T observed in its initial comments, the Commission must be careful to stay within the new limitations on its statutory authority that are set forth in the Act. AT&T, p. 3. And, it should be emphasized again that the Commission must take care to not contradict the revised state telecommunications policy, set forth in amended section 4927.02 of the Revised Code, or to frustrate the intent of the Act. AT&T, p. 2.

[1] The AT&T Entities are The Ohio Bell Telephone Company d/b/a AT&T Ohio, AT&T Communications of Ohio, Inc., TCG Ohio, SBC Long Distance d/b/a AT&T Long Distance, SNET America, Inc. d/b/a AT&T Long Distance East, AT&T Corp. d/b/a AT&T Advanced Solutions, Cincinnati SMSA, L.P., and New Cingular Wireless PCS, LLC d/b/a AT&T Mobility.

While the Act maintains important consumer protections and enhances the "safety net" of lifeline service for low income and other qualifying residential customers of the incumbent local telephone companies ("ILECs") such as AT&T Ohio, the Act is not an open invitation to increase regulation in the manner suggested in many of the comments. In fact, the Act has specific language to guard against this occurrence. For example, the Act directs that "(t)he public utilities commission shall adopt rules prescribing the following standards for the provision of basic local exchange service, and shall adopt ***no other rules*** regarding that service except as expressly authorized in this chapter." R. C. § 4927.08(B) (emphasis added). Several parties ignore this and similar language, but the Commission cannot.

In its initial comments, the OPTC asks the Commission to address what it fears might be "unintended consequences" arising from the timing of the implementation of several of the Act's provisions. OPTC, pp. 2-3. But the Commission cannot ignore the Act's requirements to rescind the specified provisions of the Commission's rules (Act, Section 3) or the provision concerning the enforcement of those rules. That the Commission is moving quickly to implement the Act is a good thing. It is mere speculation on the part of OPTC to suggest that there will be "gaps" in lifeline programs, consumer protections, or other aspects of the current rules and the corresponding provisions of the Act or the rules implementing those provisions. The Commission need not, and should not, respond to such speculation. As to the imagined gap in lifeline oversight, it should be noted that an OTA-sponsored meeting held on September 15, 2010, attended by Commission Staff and industry representatives, demonstrates the Commission's intent to move quickly toward implementing the statewide lifeline advisory board in a timely manner.

The OPTC comments also call for much more extensive involvement of OCC in the receipt of notices and other information provided by the telephone companies than is specified in the Act. The Act is very limited in this regard in that only there are only three instances where a telephone company is directed to provide the OCC with information or to include OCC contact information in telephone company mailings. In R. C. § 4905.14, concerning annual reports, language is carried over from current law that requires public utilities to provide the OCC with a copy of their annual report filed with the Commission. R. C. § 4905.14(A)(1). In a new provision of the Act, it is directed that OCC's contact information is to be included on residential customer bills and disconnection notices. R. C. § 4927.17(B). But nowhere else in the revised Chapter 4927 of the Revised Code is it directed that a copy of any notice or any information or plan is to be provided to the OCC.

Despite the absence of any statutory authority, in its draft rules, the Staff has included a "notice to the OCC" provision no fewer than ***five*** times.[2] The OPTC views this as a strategic opening and has proposed ***13 additional instances*** where notice to the OCC is required or where information or plans must be provided to the OCC.[3] Taken together, these provisions would impose ***18 additional regulatory obligations*** that are not found in the Act. This is directly contrary to the Act's purpose to reduce regulation, not expand it. The General Assembly demonstrated that it is capable of including OCC in regulatory processes where it is appropriate, such as in receiving copies of the annual reports or in having OCC's contact information included on residential customer bills and disconnection notices. Under the Act, it is not the Commission's province to include "notice to the OCC" requirements in five, thirteen, eighteen, or

[2] *See* proposed rules 7(A), 14(C)(1), 14(D), 14(G)(3), and 25(A)(1).
[3] These thirteen occurrences appear in OPTC's proposed edits in rules 7(B), 7(F), 14(F)(5), 19(N), 19(S), 26(A)(3)(renumbered as 26(D) by OPTC), 27(G)(1), 28, 30(B), 31(B), 31(C), 31(E), and 31(F).

any number of rule provisions. The Commission should not adopt any of these eighteen extraneous requirements.

As it did during the debate on the passage of the Act, OCTA raises a number of wholesale issues that it would like to now inject into the rulemaking process. The General Assembly decided not to address those wholesale issues in the Act, being assured by the Commission and others that the Commission's powers under the Telecommunications Act of 1996 ("TA '96"), state law, and its carrier-to-carrier rules provide ample authority in this area and are, in fact, undisturbed by the Act. Having lost its argument in the General Assembly, the OCTA revives it here. OCTA's efforts to create new rules governing wholesale relationships in this rulemaking should therefore not be rewarded. The Commission should not give OCTA another bite at the apple.

Many of the other comments filed propose welcome improvements to the draft rules. Some of the suggested improvements mirror suggestions made by AT&T in its initial comments. Several of the suggested improvements are new. In these reply comments, AT&T identifies and supports the good suggestions and separates them from the bad ones. The Commission should adopt all of the good suggestions and reject the bad ones in adopting the final rules, for the reasons set forth herein.

Rule-by-Rule Comments

4901:1-6-01 Definitions

As noted in the introduction above, OCTA attempts, in this rulemaking, to inject wholesale issues into these rules. OCTA, pp. 2-3, 5-7, 11-12. OCTA cleverly suggests that the definition of "customer" be expanded so as to include wholesale customers, including its members. But the focus of the Act, and the focus of these proposed rules to implement the Act, is on the regulation of service to ***retail*** customers. The carrier-to-carrier rules (O.A.C. Chapter 4901:1-7) were purposefully left intact by the Act. The Commission's powers under TA '96 to regulate wholesale services were maintained and clarified. The body of "wholesale" telecommunications law (both Ohio and federal) and the carrier-to-carrier rules fully protect the OCTA's and its members' interests. For example, AT&T Ohio's interconnection agreement with Time Warner (one of OCTA's members) contains comprehensive notice provisions that should not be duplicated (or contradicted) by these rules.[4] OCTA's approach runs the risk of contradicting agreed-to and Commission-approved language in the interconnection agreements. For these reasons, the Commission need not, and should not, expand what are clearly ***retail*** rule provisions to encompass wholesale relationships and issues.

The OPTC and TWTC suggestions in this regard suffer the same infirmity as the OCTA's. OPTC, p. 5; TWTC, p. 3. The Commission should clarify the proposed definition so it

[4] *See* Case No. 02-911-TP-NAG, agreement filed April 17, 2002 at section 17.2.1. There, the ICA provides as follows:

> 17.2.1 AM-OH communicates official information to TWTC via its CLEC Online notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

encompasses only retail customers, and not wholesale customers. The suggested language follows:

> "Customer" means any end user ***that is*** a person, firm, partnership, corporation, municipality, cooperative organization, government agency, etc. that agrees to purchase a ***retail*** telecommunications service and is responsible for paying charges and for complying with the rules and regulations of the telephone company.

AT&T agrees with OTA's suggestion that the definition of "alternative operator services" should be eliminated. OTA, p. 2.

The OPTC suggestion concerning the term "postmark" in the context of bills and disconnection notices should be rejected. OPTC, p. 7. To adopt this suggestion would be to turn back the clock on the Commission's 2002 decision allowing AT&T Ohio's current practices and the subsequent rule change that embraced that decision and redefined "postmark." Case No. 00-1265-TP-ORD, Entry, October 3, 2002; O.A.C. § 4901:1-5-01(Z)(effective January 1, 2008). The Company's practices under that order and the current rule are both necessary and reasonable. There is no need for a postmark on the bill envelope, and that has reduced costs and increased efficiencies, with no resulting customer complaints. OPTC again offers mere speculation that telephone companies might "game the system" in situations where bills and notices are not actually postmarked on the day of mailing. The OPTC suggestion is a solution in search of a problem and should be rejected. To adopt that suggestion would be to eliminate the efficiencies that have been gained under the waiver and the current rule and increase costs to the telephone companies unnecessarily.[5] The status quo should be maintained.

[5] The postmark issue is also discussed in the context of proposed Rule 12(C)(7) below.

OPTC's suggestion concerning revising the definition of "traditional service area" apparently comes with good intentions but would not address the problem completely. Future boundary changes would be in limbo if service territories as of the effective date of the Act are identified as the appropriate marker. Contrary to OPTC's suggestion, company mergers and name changes have nothing to do with this issue, because exchange boundaries are not thereby changed. But to recognize the status quo (as intended) and to accommodate future boundary changes, OPTC's suggestion could be improved by referencing the ILEC service territories as they exist on September 13, 2010 ***or as later altered with Commission approval***.

OPTC's suggestion to add a definition of "public safety answering point" is a good one and should be adopted. OPTC, p. 9. So should TWTC's proposal to define "non-residential service" to mean a service other than residential service, provided it is not construed to include any wholesale services. TWTC, p. 4.

4901:1-6-02 Purpose and Scope

Many of the commenting parties' suggestions concerning this proposed rule are good ones and should be adopted. OCTA, p. 3; OTA, p. 3; OPTC, pp. 12-13. However, OPTC's suggestion to add a "process" for the consideration of waiver requests should not be adopted. OPTC, p. 13 and OPTC edits, p. 4, division (G). A waiver process is already addressed in the Commission's procedural rules in O.A.C. § 4901:1-12, addressing motions, and need not be repeated (or changed) here. OPTC also suggests deleting the reference to that controlling procedural rule in its mark-up; this reference should be retained. OPTC edits, p. 4, division (F). In response to OPTC's proposed two-prong procedure in division (E), AT&T submits that the

Commission is fully capable of managing its own processes and it can determine the need for the proposed change.

4901:1-6-03 Investigation and Monitoring

OTA's concern about this proposed rule is also reflected in AT&T's initial comments. OTA, p 3; AT&T, pp. 6-7. OTA's proposed edits are more extensive than those of AT&T, but are also worthy of consideration since they also reflect the new limitations of the Commission's "general supervision." The Commission's newly defined jurisdiction and enforcement power should be refocused on significant triggering events that are truly in need of the use of those powers, not on isolated instances of perceived problems. The day-to-day monitoring of telephone company activities should be reduced, consistent with the Act's intent to reduce regulation.

4901:1-6-04 Application Process

The comments criticizing the proposed requirement to have all applications signed by a company officer and notarized are all valid, and the proposed rule should be amended, accordingly. OCTA, p. 4; OTA, p. 3; TWTC, p. 2. AT&T also has no objection to the OPTC's proposed edits to this rule. OPTC, p. 14.

4901:1-6-06 Suspensions

The suggestions of both the OCTA and OTA could be combined and would result in an improved rule. In so doing, suspensions could be imposed for violations of the law or for non-compliance with the rules. OCTA, p. 5; OTA, p. 3.

4901:1-6-07 Content of Customer Notice

The suggestions of CBT and OTA to clarify the customer notice requirements are all good ones and should be adopted, except that notices to OCC that are not required by the Act should not be included in these rules. CBT, p. 2; OTA, p. 4.

As addressed before, OCTA's suggestion that "customer" be broadened to include wholesale customers should not be adopted. OCTA, p. 5. Here again, OCTA attempts to bring wholesale relationships and issues within the purview of these rules that are focused on retail services. *See* pp. 3-4 above. OCTA is correct in suggesting the inclusion of "Title 49" (or, perhaps better yet, "the law or") in the "re-noticing" provision. OCTA, pp. 5-6.

The OPTC's suggestion that notice of abandonment or withdrawal and upward alterations of BLES rates be provided to OCC thirty days in advance goes beyond the requirements of the statute and should not be adopted. OPTC, p. 14. The OPTC would impose requirements in the rules for which no authority can be found in the Act. The Act directs the Commission to adopt rules to implement it, not to expand it. *See, e.g.*, R. C. § 4927.03(E). This

is one of many areas where OPTC seeks to retain - - and even expand - - current regulation despite the Act's clear intent to reduce regulation and its associated costs and burdens.

4901:1-6-08 Telephone company certification

AT&T questions the impact of OCTA's suggestion that the rule indicate that certification is not necessary for a provider to enter into an interconnection agreement with an ILEC. OCTA, p. 6. The TA '96 interconnection rights and obligations are focused on telecommunications carriers. To adopt OCTA's suggestion might be to inadvertently expand the ILECs' interconnection obligations, contrary to the Act and, in particular, in possible conflict with R. C. §§ 4927.04 and 4927.16. Furthermore, the establishment of interconnection agreements is a carrier-to-carrier/wholesale issue. The current carrier-to-carrier rules fully address the issue (O.A.C. §§ 4901:1-7-07 through -09) and OCTA's suggestion to impose new requirements via this proceeding and the resulting retail rules is misplaced and inappropriate. OCTA's suggestion should not be adopted.

OPTC's stylistic and grammatical suggestions concerning divisions (B), (C)(1), and (F) are appropriate and should be adopted. OPTC, pp. 15-16. But the Commission should not adopt the OPTC's suggestions to incorporate an "expedited" discovery process in certification cases and to require applicants to report on complaints or adjudications in other states. OPTC, p. 15-16. Both suggestions add needless burdens on applicants in what should be a streamlined process. If a certification application is suspended, intervening parties have ample time and ability to collect and present evidence supporting their positions. The problems that have been

encountered with a few telephone companies do not justify imposing extensive new requirements on all telephone company applicants.

4901:1-6-09 Eligible Telecommunications Carriers (ETCs)

As to OPTC's suggestions concerning Competitive Eligible Telecommunications Carrier ("CETC") applications, it appears that the OPTC is dictating how the Commission should design and implement its processes. OPTC, pp. 17-18. The extensive requirements proposed by OPTC might not be necessary for the Commission, which has experience in this area, to do its job. AT&T supports OPTC's suggestion for a lifeline-only ETC designation. OPTC, p. 17. AT&T also agrees with OPTC's observation that a wireless reseller need not register with the Commission under R. C. § 4927.05, but can nevertheless be a CETC. OPTC, p. 19. AT&T does not, however, understand the need for, or the legal authority underlying, OPTC's suggestion that the Commission establish a statewide advisory board to address issues associated with non-ILEC, low-income ETCs. OPTC, p. 19. The Act does not contemplate another such group, and more attendant bureaucracy.

4901:1-6-10 Competitive emergency services telecommunications carrier (CESTC) certification

OCTA and OTA echoed AT&T's suggestion that the reference to "telephone company" in division (B)(2) should be changed to "CESTC." OCTA, p. 7; OTA, p. 4. This change should be made.

4901:1-6-11 Tariffed Services

The OTA proposes edits to conform to suggested changes to other rules. OTA, p. 4. OCTA suggests replacing the term "telecommunications carrier" with the term "CESTC." OCTA, p. 8. Both suggestions are good ones and should be adopted. OPTC suggests adding "installation and reconnection fees" and "lifeline service" to the list of services that must be approved by the Commission and tariffed. OPTC, p. 20 and edits, p. 12. Because the statute makes it very clear that these items must be tariffed, there is no reason to repeat the requirement in the rules. R. C. § 4927.12(F); R. C. § 4927.13(B). Moreover, it would be inappropriate to add "installation and reconnection fees" to the list in the manner proposed by OPTC because, as explained in AT&T's initial comments, those fees are not subject to Commission ***approval***; they simply must be tariffed ***in the manner prescribed*** by the Commission's rule. AT&T, pp 15-16. The proposed rule, though, specifies that the rates, terms, and conditions for the items in the list "shall be approved and tariffed by the Commission . . . ." Division (A)(1).[6] Similarly, lifeline rates are not specifically approved by the Commission; they are the result of the application of lifeline discounts to the services ordered. *See* AT&T, p. 20. For these reasons, OPTC's suggestions in this regard should not be adopted. If the Commission determines that the services identified by OPTC should be included in this rule, they should be listed in a separate division that makes it clear that they are not subject to Commission approval.

[6] This phrase in the rule should say "approved by the commission and tariffed," since nothing is "tariffed by the commission."

4901:1-6-12 Service Requirements for BLES

The CBT, OTA, and Verizon suggestions to improve this proposed rule are reasonable and should be adopted. CBT, p. 3; OTA, p. 5; and Verizon, p. 1. Verizon is correct that, in the new environment, the Commission need not specifically prescribe the contact information language to be used so long as the information is conveyed in a reasonable manner; some flexibility should be permitted here. The OCTA's suggestion to change the word "providing" is not a good one; that word does not suggest that CLECs are required to provide BLES. OCTA, p. 8.

To borrow OPTC's phrase, AT&T "fervently objects" to most of the OPTC's suggestions. OPTC, pp. 21- 25. The suggestions would expand regulation in a manner inconsistent with the Act, not contract it.

Proposed division (B) is carried over from the MTSS, as OPTC notes, but it is valid because it correctly reflects the law and good public policy. The fact that there are now "very few minimum standards" (OPTC, p. 21) does not change the equation. OPTC ignores the statute. R. C. § 4927.08(B) requires the Commission to adopt rules "prescribing the following standards." The Act also requires the Commission to provide for a waiver of the standards "in circumstances determined appropriate by the commission." R. C. § 4927.08(C). A violation of any one of those standards does not - - and should not - - equate to a "finding of inadequate service." A specific process is set forth in the Act, in R. C. § 4927.21, for the adjudication of alleged acts of noncompliance with Chapter 4927 or the Commission's rules adopted thereunder. The procedural and substantive safeguards built into that process would be nullified if the

OPTC's "automatic finding" approach was adopted. The OPTC, apparently a champion of "due process" in other contexts, ignores that important principle here, where it protects the rights of the telephone companies. Its suggestion should be rejected.

The exceptions in proposed divisions (C)(2) and (C)(6) are criticized by OPTC (OPTC, pp. 21-22), but the exceptions reflect the status quo and are specifically authorized by the waiver provision of the pertinent law, R. C. § 4927.08(C). The exceptions are reasonable and should be adopted. OPTC is simply wrong when it argues that the statute does not authorize the proposed exceptions. OPTC, p. 22. It clearly does. Ironically, OPTC argues that the Act does not allow these "status quo" exceptions at the same time it argues for an expansive reading of the Act in other contexts in a manner favorable to its position.

Similarly, and as discussed in connection with proposed rule 1(W) above, the Staff's proposed division (C)(7) reference to the mailing date on the bill, in lieu of a postmark, is reasonable, and is authorized by the waiver provision of the statute. Moreover, it would continue the current practices that have been followed without complaint. OPTC, p. 23.

OPTC's criticism of proposed division (C)(9) is valid. The statute only addresses disconnection for non-payment (R. C. § 4927.08(B)(5)), so any references to disconnection for reasons other than non-payment need not be included in the rules. It is within the discretion of the telephone companies to adopt and implement notice policies related to disconnections for reasons other than non-payment and the attendant customer notice practices. For this reason, the OPTC's narrow suggestion here should be adopted.

4901:1-6-14 BLES Pricing

AT&T agrees with OPTC's analysis and conclusion that the term "primary line" should not be used in division (B)(3). OPTC, p. 25. AT&T made the same suggestion. AT&T, p. 13. Similarly, AT&T has no objection to using the term "local exchange company" in divisions (A)(1) and (B)(1), as suggested by OPTC. OPTC, p. 25.

AT&T believes the phrase "and may be priced at market-based rates" adds needed clarity and is consistent with the Act. Therefore, it should not be removed from division (B)(5), as OPTC suggests. OPTC, p. 26.

In division (F)(5), OPTC urges the addition of a requirement to provide notice to the OCC. OPTC, p. 26. Once again, this is not required by the Act and is not within the Commission's power to adopt. Other than those identified above, OPTC's other proposed changes to this rule are reasonable and should be adopted. OPTC, p. 26.

AT&T supports the OTA's recommendations for deleting references to late payment charges and installation and reconnection fees, and for clarifying that the reference to $1.25 is associated with monthly rates in this proposed rule. OTA, p. 5.

AT&T also agrees with CBT's suggestion that this rule be clarified so as to exclude measured rate extended area service. CBT, pp. 3-4. The definition of BLES only references flat-rate residential service, so this clarification is appropriate. R. C. § 4927.01(A)(1)(b)(ii). This clarification could be made by adopting AT&T's suggested language:

> "The BLES pricing flexibility set forth in this rule is only applicable to the monthly recurring rate for the network access line component of BLES."

AT&T, p. 14.

At the same time, the Commission should also confirm or clarify that flat-rate BLES is the only variety of BLES that is subject to the various requirements on BLES, such as those in R. C. §§ 4927.08 and 4927.12. The Staff's proposed rule clearly suggests that other service charges, such as measured rate extended area service and message- and measured-rate local service charges, have market-based, unlimited pricing flexibility. However, under the revised statutory definition of basic local exchange service in R. C. § 4927.01(A)(1), BLES includes "access to ***and usage of***" the services defined as BLES. The Commission should clarify whether local usage charges - - other than flat-rate local usage charges - - associated with BLES, like measured-rate and message-rate business and residence charges, are included in BLES and are subject to the various provisions of the Act related to BLES.

AT&T does not agree with CBT's suggestion that the rule include a "standard of reasonableness" applicable to installation and reconnection charges. CBT, p. 5. All telephone company rates and charges are ***potentially*** subject to scrutiny under a "standard of reasonableness" in a complaint filed under R. C. § 4927.21, the new complaint statute, and that standard need not be repeated in any of the rules. The statute does not contemplate or allow for a "review process" for increases in installation and reconnection charges, and one should not be adopted in these rules, for the reasons explained in AT&T's initial comments. AT&T, pp. 14-16.

4901:1-6-15 Directory Information

AT&T agrees with the intent behind the OTA and CBT suggestions for narrowing the requirements related to the provisioning of telephone directories. OTA, p. 5; CBT, p. 5. The OTA suggestion more closely aligns with the Act and should be adopted. OPTC adds to the already over-reaching language of this rule; its suggestions should not be adopted. OPTC, p. 26. The Act contemplates a free listing but the rule need not specify that fact. Under the Act, BLES includes "[p]rovision of a telephone directory in any reasonable format ***for no additional charge*** and a listing in that directory, with reasonable accommodations made for private listings." R. C. § 4927.01(A)(1)(b)(vi) (emphasis added). The rule need not say anything more; the Act's directive is clear and concise.

4901:1-6-16 Unfair or Deceptive Acts and Practices

In its initial comments, AT&T objected to the proposed rule in its entirety, for the reasons explained. AT&T, pp. 17-19. A review of the other comments filed does nothing to change AT&T's position. CBT, p. 6; OTA, p. 6; OPTC, p. 27; Verizon, p. 2. Several of the suggested edits get at some of the issues, but not the most significant ones. First, the Commission need not repeat R. C. § 4927.06 in the rule. Second, it should not expand on that statute in this rulemaking without evidence and a pattern or trend of significant problems that need to be addressed. Third, the Commission should provide for (or at least acknowledge) the "review process" contemplated in R. C. § 4927.06(A)(1) and (2) to determine when disclosing the specified information is not practicable. *See* AT&T, p. 19. It is only if this sensible

approach proposed by AT&T is rejected by the Commission that the edits to the proposed rule suggested by the other commenting parties should be considered.

4901:1-6-18 Slamming and preferred carrier freezes

AT&T has no objections to OPTC's suggested stylistic edits to this rule. OPTC, p. 28, edits, p. 21.

4901:1-6-19 Lifeline

AT&T supports CBT's suggested limits on payment arrangements, OTA's grammatical clarifications, and OTA's and CBT's recommendations to delete the requirement to provide additional data in the annual Lifeline report. OTA, p. 6 and OTA edits, pp. 20-23; CBT, p. 7. The OPTC's proposals, though, have significant problems. Surprisingly, OPTC's suggested edit to division (B)(2) ***would reduce lifeline benefits***. OPTC, pp. 29-31. The controlling federal rule provides that a "carrier's Link Up program shall allow a consumer to receive the benefit of the Link Up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which the Link Up assistance was previously provided." 47 C.F.R. § 54.411(c). The OPTC's suggestion would conflict with the federal rule by disallowing the benefit to a customer who moves over the course of a year, restricting the benefit to only "once every twelve months per customer." OPTC edits, p. 22. This proposal should be rejected.

OPTC's proposed edits to division (F), which clarify that decisions of the advisory board are subject to Commission review, are good as far as they go, but they do not go far enough. But if coupled with AT&T's suggestions (AT&T, p. 20), the OPTC edits would improve the proposed rule. This division should read as follows:

> All activities relating to the promotion of, marketing of, and outreach regarding lifeline service provided by the large ILECs shall be coordinated through a single advisory board composed of staff of the public utilities commission, the office of the consumers' counsel (OCC), consumer groups representing low income constituents, two representatives from the Ohio association of community action agencies, and every large ILEC. The commission staff shall provide active leadership in the initial organization of the statewide board and the development of procedures and bylaws under which the board will operate. Commission staff shall~~, with the assistance of the office of the consumers' counsel,~~ work with the advisory board to reach consensus on the organization of the board and all activities relating to the promotion of, marketing of, and outreach regarding lifeline service. ~~However, where consensus is not possible, the commission's staff shall make the final determination. The commission may review and approve~~ DECISIONS ON THE ORGANIZATION OF THE BOARD AND decisions of the advisory board, including decisions on how the lifeline marketing, promotion, and outreach activities are implemented, ARE SUBJECT TO COMMISSION REVIEW.

In division (N), OPTC proposes yet another requirement to provide notice to the OCC that is beyond the requirements of the statute and should not be adopted. OPTC, p. 30.

OPTC's proposed edits to division (P) should not be adopted. The Staff proposed a reasonable two-pronged process that OPTC would eliminate. It makes sense for the Commission to identify a set of specific discounts and expenses in division (P)(1) and provide for them to be recovered via a customer billing surcharge proposed in a 30-day ATA filing. If an ILEC ETC seeks to recover other expenses, the process in division (P)(2) would apply. This approach is consistent with the Act and should be adopted, OPTC's objections notwithstanding. If OPTC's approach is adopted, though, it is clear that the foregone revenue from differences between the lifeline service rates and the regular residential BLES rates are "lifeline expenses"

within the meaning of the Act and should be recoverable via the surcharge. Under the Act, the unrecovered revenue resulting from the disparity between lifeline rates and regular residential BLES rates is part and parcel of the lifeline discount.

AT&T objects to OPTC's suggestion to add OCC to the distribution of the additional information on lifeline that the Staff might call for under division (S). AT&T opposed the requirement to provide this additional information to the Staff in its initial comments. AT&T, p. 21. The annual report requirement in the Act, found in R. C. § 4927.13(E), does not mention OCC. Both proposals go beyond the requirements of the Act and should not be adopted.

AT&T would additionally note that division (B) refers to a "primary access line." This phrase should be deleted for the reasons cited in AT&T's comments (p. 13 - 14), and in its reply comments on proposed Rule 14 above. And, as noted above, OPTC has also questioned the use of this term in connection with BLES pricing. OPTC, p. 25.

4901:1-6-20 Discounts for Persons with Communications Disabilities

As AT&T noted in its initial comments, this proposed rule has numerous problems. AT&T, pp. 21-23. OTA and CBT have recognized one of them. OTA, p. 6; CBT, p. 9. Like AT&T, CBT recognized that there are three options available today for applying the discounts under the current rule. The OPTC's minor edit does not cure the problems with the rule. OPTC edits, p. 25. The Commission should adopt AT&T's suggestion and revisit the need for this rule in a separate proceeding.

4901:1-6-21 Termination of community voice mail pilot program

AT&T has no objection to the proposed rule to include in the bidding process the program termination criteria offered by OPTC, but it appears that it would be an alternative to the Staff's proposed language and not an addition to it. OPTC edits, p. 26. The Commission can choose the most appropriate language to meet the requirements of the Act.

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

AT&T and OTA both identified the Commission's lack of authority over AOS, and the rule should be modified accordingly. AT&T, p. 23; OTA, p. 7. The OPTC's proposed edits to the AOS portions of the rule, therefore, are moot. OPTC edits, pp. 26-27.

4901:1-6-23 Pay Telephone Access Lines

AT&T has no objections to the edits proposed by CBT and OTA clarifying provisioning timeframes or to OPTC's stylistic edits. CBT, p. 10; OTA, p. 7; OPTC, p. 33 and edits, p. 28.

4901:1-6-24 Wireless service provisions

As to OPTC's proposal to add a new division (H) to this rule explicitly asserting the Commission's authority over wireless resellers, AT&T responds that what is proposed is an

accurate statement of the law, but there is no need to adopt such a statement in these rules. OPTC, p. 34 and edits, p. 30.

4901:1-6-25 Withdrawal of telecommunications services

OCTA's comments in this section and the following one regarding the withdrawal of BLES by an ILEC (OCTA, p. 9 - 10) appear to ignore the statutory requirements that an ILEC must provide BLES in its ILEC service area and that it cannot be withdrawn. R. C. §§ 4927.11(A) and 4927.07(C)(1). The rules need not address this circumstance. OPTC's suggestions encouraging 30-day tariff filings and the other stylistic edits to this proposed rule appear to be reasonable, as do CBT's clarifications regarding migration to other services versus the withdrawal of all services. CBT, p. 10; OPTC, p. 34 and edits, pp. 30-31.

4901:1-6-26 Abandonment

OTA echoed AT&T's suggestion that division (A)(8) should have an introductory phrase, as follows: "*Except in the case of disconnection for non-payment*, no telephone company may discontinue services provided to an abandoning local exchange carrier (LEC) prior to the effective date that the LEC will abandon service." OTA edits, p. 30; AT&T, p. 24. On further review, even that language might be confusing. A better solution might be the following: "Except in the case of disconnection for non-payment, no underlying telephone company may discontinue services provided to a telephone company that is abandoning service prior to the effective date of the abandonment."

OCTA is correct that notice to a CLEC should be required, even if the CLEC has no retail customers. OCTA, p. 10. AT&T agrees that if any customer notice is required, the text of that notice should be included in the application filed with the Commission.

OPTC would add yet another requirement to notify the OCC in this rule, which is not contemplated or required by the Act. OPTC, p. 35 and edits, p. 32. This suggestion should not be adopted.

4901:1-6-27 Provider of Last Resort (POLR)

Here, OPTC, in its suggested definition of impacted persons, would add an extensive notice requirement that goes well beyond the statute, current practice, and common sense. OPTC, p. 36 and edits, p. 34. To the extent any local governments are customers of the ILEC, they will receive notice under the rule as customers. To the extent they are not, their interest is tenuous at best and they are not "persons impacted by the requested waiver." And, here again, OPTC would include OCC on the "affected persons" list and add to the complexity of the process. These proposals should not be adopted. To be consistent with the Act, the Commission should adopt OPTC's language only up to the first semicolon.

In division (G)(1)(g), the OPTC suggests including the concept of "reasonable substitutes for BLES" when all the statute requires is a showing of the "alternatives" that would be available if the waiver were granted. OPTC edits, p. 34; R. C. 4927.11(C). Again, this suggestion goes beyond the Act and should not be adopted.

4901:1-6-28 Bankruptcy

Here, OPTC again proposes another "notice to OCC" requirement that should not be adopted. OPTC p. 36, edits, p. 35.

4901:1-6-29 Telephone company procedures for notifying the commission of changes in operations

The OPTC stylistic suggestions are reasonable, except for the proposed change in division (D) that would convert a requirement to "submit" the alternative customer notice evidence to a requirement to file it. AT&T notes this rule requires further review to insure consistency with R. C. § 4905.402(C), as amended in the Act, and the certification and registration provisions in R. C. § 4927.05. The rule appears to be more expansive than the Act.

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

OTA's suggestion to clarify that the record retention requirement only apply to records required to be maintained under R. C. §§ 4927.01 to 4927.21 of the Act is a good one and should be adopted. OTA, p. 7. But, here again, OPTC includes yet another notice to OCC in its edits to the proposed rules. OPTC edits, p. 37. In this context, OPTC ignores OCC's limited role as an advocate, not as a regulator.

4901:1-6-31 Emergency and outage operations

AT&T's suggestion concerning this rule was that the Commission should direct the telephone companies to supply to the Staff any outage reports that they provide to the FCC.

AT&T, p. 24. AT&T also urged that divisions (F) and (G) not be adopted. AT&T, pp. 24-25. OTA and Verizon make similar arguments. OTA, p. 7; Verizon, p. 4. In light of these suggestions, AT&T does not support the edits proposed by the OPTC. OPTC, p. 37 and edits, p. 37. This is particularly true in the case of the additional "notice to OCC" provision proposed here. To the extent the Commission thinks it needs more or different information than that called for by the FCC (and no reason has been shown why it should), the companies will need time to compile and provide it. That is why the better approach is to simply require the same filings made with the FCC to be provided to the Commission Staff in a timely manner.

4901:1-6-32 Zones of operation, boundary changes, and administration of borderline boundaries

AT&T has no objection to the edit to the heading of this proposed rule offered by OPTC. OPTC, p. 37-38; edits, p. 39. On further review, AT&T would note that, while the introductory sentence to this proposed rule might be interpreted such that the rule only applies to BLES, this would not make sense. Boundaries cannot be changed just for BLES, so it is appropriate for this rule to govern all ILEC boundary changes.

4901:1-6-33 Excess Construction Charges

In its initial comments, AT&T stated that the proposed rule on excess construction charges has the same infirmity as the proposed restrictions on non-recurring charges discussed in connection with proposed rule 14: it is beyond the Commission's authority. AT&T, p. 25. AT&T urged that the proposed rule not be adopted. Id. If the Commission decides

otherwise, however, the changes suggested by CBT and OTA would improve the rule. CBT, p. 11; OTA, p. 8. In that instance, OPTC's suggestion in division (B) would mirror the current rule and practice. OPTC, p. 38, edits, p. 39. But OPTC's suggestion that the "amount of such charge" be specified in the tariff would not be practical, given the project-specific nature of such charges. OPTC, p. 38, edits, p. 40. That suggestion should be rejected.

4901:1-6-36 Telecommunications relay services assessment procedures

AT&T has no objections to the suggested edits to this proposed rule. OCTA, p. 10, OTA, p. 8; OPTC, p. 39, edits, pp. 40-41.

4901:1-6-37 Assessments and Annual Reports

OTA's and Verizon's suggested edits to this proposed rule, clarifying that annual reports are filed and assessment reports are submitted, are appropriate and should be adopted. OTA, p. 8; Verizon, p. 5. Such is not the case with OCTA's suggestions, however. The OCTA would essentially require each company to construct a pole attachment and conduit occupancy rate case in each annual filing. OCTA, p. 12. This is not required today and would be a major change to the status quo. To require such detailed information would add unnecessarily to the burden and expense of preparing and filing the annual reports. It would essentially shift the burden to each ILEC to justify its rates on an annual basis, something the Commission has never even contemplated, much less implemented. The Act maintains the status quo on pole attachments and conduit occupancy rate regulation; it does not contemplate increasing it. The rules should not increase it, either. OCTA attempts here to resolve wholesale process issues that

the General Assembly declined to address. The Commission should not give OCTA another bite at the apple. The OCTA's proposal would grossly expand the requirements and ignores the fact that the FCC is currently examining pole attachment issues. Moreover, OCTA has processes available to it to pursue these issues. For these reasons, the OCTA's self-serving proposal should be rejected.

Conclusion

These reply comments highlight several areas where the proposed rules can be improved, and those suggestions should be adopted. But the Commission should be careful to not expand regulation in a manner not contemplated by the Act. The Act places clear limits on the Commission's authority, and those limits must be respected. Where the proposed rules, or the commenting parties' suggestions concerning them, conflict with the Act, the Commission should be wary and should only adopt rules that faithfully implement the provisions of the Act. In no event should these rules be used as the vehicle to address or resolve wholesale issues or to add more regulation - - even in the name of "consumer protection" - - than that allowed by the Act.

Respectfully submitted,

THE AT&T ENTITIES

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 30th day of September, 2010 by e-mail or by prepaid first class mail, as noted, on the parties shown below.

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