BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation into Intrastate Carrier Access Reform Pursuant to S.B.162.	)))	Case No. 10-2387-TP-COI

AT&T'S MEMORANDUM CONTRA OCC'S, CBT'S, AND VERIZON'S MOTIONS FOR HEARING AND OTHER PROCEDURAL CHANGES

The AT&T Entities[1] ("AT&T"), by their attorneys and pursuant to Section 4901-1-12 of the Commission's rules, file this memorandum contra the motions for hearing filed in this case by The Office of the Ohio Consumers' Counsel ("OCC") on November 9, 2010; by Cincinnati Bell Telephone Company LLC ("CBT") on November 12, 2010; and by MCImetro Access Transmission Service LLC d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc. d/b/a Verizon Business Services, and Cellco Partnership and its subsidiaries providing wireless service in the state of Ohio, collectively d/b/a Verizon Wireless (together "Verizon"), on November 18, 2010 (together referred to as "Movants").[2]

The Movants' goals are simple and not productive – to significantly delay the access reform restructuring mandated by Substitute S.B. 162 and the Commission's November 3, 2010 Entry by proposing needless Hearings and alleging the need for

[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.

[2] AT&T does not oppose OCC's motion to intervene, recognizing that OCC has broad rights of intervention and that the Commission customarily grants OCC's motions to intervene in such cases. Historically, in COI cases, any party that files initial comments or reply comments is considered to be a party without the need to file a motion to intervene.

supporting data. The Commission's goal is straightforward: to establish a **framework** pursuant to Substitute S.B. 162 to enable access reform in a timely manner, which includes a reasonable Initial and Reply Comment cycle. Expanding this proceeding by allowing Hearings serves no purpose. All parties may file Initial Comments and Reply Comments on the Plan proposed in the Entry. In addition, the data sought by the Movants, while ultimately necessary to determine each Contributing Carrier's payment into the Fund, and to determine the amount each Eligible carrier may receive from the fund, is surely not necessary to reasonably establish the Fund's parameters.

OCC, and to a large extent CBT and Verizon, pose several questions. First, OCC questions whether the intrastate access charges of LECs whose current access charges are in excess of the interstate level should be reduced, and to what level. The answer is rather obvious. For **over a decade** it has been the Commission's policy that intrastate switched access charges not exceed interstate levels. Indeed, in 1987, the Commission established the principle of ILEC intrastate/interstate access rate mirroring in its original access charge proceeding:

> "effective May 1, 1987, each LEC for intrastate purposes shall adopt access charges which are either at or below its interstate rates in effect on the date of this Order…" (Case No. 83-464-TP-COI, March 12, 1987, at p. 9).

It was ultimately this policy that resulted in the large ILECs lowering their respective intrastate switched access rates to interstate levels. The large ILECs that "mirror" intrastate and interstate switched access rates are AT&T Ohio, Cincinnati Bell, (pre-CenturyLink merger) Embarq and (pre-Frontier transaction) Verizon.

However, when the FCC lowered interstate switched access rates (with an effective date of January 1, 1998) by moving revenue from the Local Switching rate element (DEM weighting), 34 small ILECs petitioned the Commission on October 17, 1997, to temporarily break the interstate/intrastate "mirror" until the Commission established an intrastate Universal Service Fund (USF) for small ILECs (< 50,000 lines). On December 18, 1997, a Commission Order permitted the small ILECs to retain their intrastate switched access rates at their December 1997 levels until September 1, 1998. Then on August 12, 1998, the Commissioner Ordered that the small ILECs could maintain their intrastate switched access rates at their December 1997 levels through September 1, 1999, "or until the Commission directs otherwise." (emphasis added).

Further, while the intrastate traffic sensitive switched access rates of the "medium-sized" (Windstream Ohio, Windstream Western Reserve and pre merger CentruryTel) ILECs mirror their interstate levels, their intrastate non-traffic sensitive switched access rates (e.g. carrier common line charges) have exceeded their interstate levels since December 1987.

Contrary to the delay tactics of the Movants, there is no need to continue the disparity between intrastate and interstate switched access rates. The Commission should quickly seize this opportunity to move forward to reestablish its long-standing policy that intrastate switched access charges not exceed interstate levels.

Second, OCC asks how "revenue neutrality" for recovering lost access revenue should be defined. "Revenue neutrality" is required by Substitute S.B. 162, and is addressed in Appendix A. In short, the Plan allows eligible carriers to recover from the fund (and for eligible price cap companies too, via a surcharge later) the difference between their intrastate and interstate access rates times the applicable quantities (typically minutes of use).

Paragraph 7 of Appendix A states: "…each eligible ILEC shall submit to the Commission the data and all the supporting documentation necessary to establish the amount that eligible ILECs will be able to receive from the ARF due to the reduction in the intrastate access rates pursuant to paragraph 1." And paragraphs 1 and 2 require that all ILECs "set the rates for intrastate switched access services at a level that does not exceed the rates for the same interstate switched services…" Thus, the framework for revenue neutrality is clearly addressed in Appendix A of the Plan.

Third, OCC asks that if reductions in access charges occur, how should the LECs recoup the revenue loss from those reductions in access charges in order to ensure revenue neutrality. The answer to this question is simple. As set forth in Appendix A to the Entry and as reiterated above, eligible carriers will be allowed to recover from the fund (and for eligible price cap companies too, via a surcharge later) the difference between their intrastate and interstate access rates times the applicable quantities (typically minutes of use).

Fourth, OCC asks whether revenue neutrality should be achieved entirely through recoupment from other carriers and their customers (as proposed by staff), or should some amount of the recoupment come from the carrier whose access charges are reduced. Apparently, OCC is confused. Appendix A to the Entry defines a "Contributing carrier" as "an entity required to pay into the restructuring fund and includes **all** incumbent local exchange carriers (ILECs) … " Appendix A, Definitions (b), p . 1 (emphasis added). Thus, even eligible carriers, by definition, are also contributing carriers and must pay into the Fund.

Fifth, OCC seeks an answer to what will the financial impact of access charge reductions be on the LECs whose access charges are reduced, and what will the impact of recoupment be on the carriers that are required to contribute to the Fund. Further, OCC argues that the ILECs' assertions must be subject to a review at a hearing, including cross-examination, especially given the inter-company support mechanism that is now being proposed. OCC's assertions are baseless. The financial impact of access charge reductions for those carriers whose access rates are decreased is not needed to evaluate the parameters of the proposed Plan. The revenue neutrality component of the Plan, as mandated by Substitute S.B. 162, negates the need for financial analysis. Accordingly, the Commission does not need to conduct a formal hearing or assess detailed financial impacts to make the necessary determinations to comply with the statutory mandate.

CBT poses a number of additional questions that it believes need to be addressed by the Commission before implementation of the proposed Fund. In order for the

Commission to investigate and answer these questions, CBT believes that additional information beyond what would otherwise be collected from the data requests in the Entry is needed. To the extent CBT believes additional data is warranted, they may propose additional data be submitted via their Initial and Reply Comments to the Plan.

CBT asserts that the Plan is the first time that the Commission Staff has proposed assessing other telephone companies to subsidize telephone companies that are required to reduce their intrastate access charges. The fact is that all carriers have been subsidizing ILECs that have higher intrastate switched access rates implicitly via those higher intrastate switched access rates. The Plan simply makes the subsidy explicit.

CBT also submits that "eligible carriers" should first rebalance their own rates to raise additional revenue from other services before seeking external relief from other Ohio carriers. CBT takes issue with the fact that the proposed Plan says nothing about the topic of rebalancing. CBT asserts that R.C. 4927.15(B) anticipates that there will be rate increases necessary to satisfy the "revenue neutral" requirement and permits those rate increases notwithstanding the limits on rate increases in the statute that would otherwise apply. CBT is clearly offering an alternative to the Plan, or at least a modification to the Plan, which may be appropriately addressed via CBT's Initial and Reply Comments to the Plan.

Similar to OCC, CBT argues that the Commission should require the submission of data from all affected parties before requiring comments on a plan or holding a

hearing. CBT argues that the proposed procedure is designed only to calculate the amounts eligible carriers may withdraw from the Fund and that contributing carriers must pay into the Fund. CBT suggests that the inquiry should begin with a determination whether a fund is necessary or appropriate and, if so, how it should be implemented and funded. CBT submits that the proposed procedure is backwards and that the data requests to "eligible carriers" are insufficient. As discussed above, detailed data is not needed to reasonably establish a framework for a plan for access reform. Further, the sheer volume of detailed data that CBT asserts is necessary would indefinitely and unreasonably delay these long overdue proceedings, contrary to the legislative intent. Indeed, CBT recognizes that such volumes of data would then require the need for additional time. The Commission should not fall prey to this delay tactic.

While Verizon agrees with the Commission staff's recommendation that Ohio intrastate switched access charges should be reduced, it supports the requests by OCC and CBT for a hearing and to receive responses to the data requests included in the Entry before moving toward a hearing.

As stated above, there is no basis to grant the Movants' requests to modify the procedural schedule. A hearing is not necessary as it would not provide the Commission with additional information necessary for an access reform framework that could not otherwise be provided via Initial and Reply Comments to the Plan and it would significantly delay the implementation of the access reform Plan. The Commission will

be able to address all of the Movants' relevant concerns through the filing of Initial and Reply Comments, coupled with data filings at the appropriate time.

Verizon bolsters its argument by referring to the FCC's First Report and Order, and stating that the proper, economically efficient way to proceed [on access reform] is though recovery of costs primarily from a carrier's own end users. However, in the more recent FCC National Broadband Plan (Connecting America), the FCC also states "Even with [Subscriber Line Charge] increases and rate rebalancing, some carriers may also need support from the reformed Universal Service Fund to ensure adequate cost recovery." (Connecting America: The National Broadband Plan, Chapter 8, Recommendation 8.7, p. 148).

The Movants are seeking to transform this docket from the access restructuring plan envisioned by the Commission staff into a lengthy and unnecessarily complicated proceeding. With the data requested and the knowledge and experience of its staff, the Commission would be able to ensure the revenue neutrality required by Substitute S.B. 162 without the further delay of a formal hearing and additional unnecessary data gathering. The Movants will not be prejudiced by any determinations made by the Commission in this case outside of a hearing. Therefore, the Movants' request for a hearing or any further delay in the procedural schedule should be denied.

OCC has served its first set of discovery to AT&T Ohio in this case. Despite the fact that OCC's discovery questions will yield no substantive information as AT&T's intrastate switched access rates are at parity to interstate levels, the Commission should clarify the timing and scope of discovery between the parties in this case before further discovery is had.

Respectfully submitted,

The AT&T Entities

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served by electronic mail to the persons listed below, on this 24th day of November 2010.

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Summary: Memorandum in Contra Motions for Hearing and Other Procedural Changes electronically filed by Ms. Mary K. Fenlon on behalf of AT&T