BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY LLC, CINCINNATI BELL EXTENDED TERRITORIES LLC, CINCINNATI BELL WIRELESS, LLC AND CINCINNATI BELL ANY DISTANCE INC.

I. INTRODUCTION

Cincinnati Bell Telephone Company LLC ("CBT"), Cincinnati Bell Extended Territories LLC ("CBET"), Cincinnati Bell Wireless, LLC ("CBW") and Cincinnati Bell Any Distance Inc. ("CBAD") (collectively "Cincinnati Bell") are interested parties in this case in which the Commission is investigating the intrastate access charges of carriers that do not mirror their interstate rates. CBT is an incumbent local exchange company whose intrastate switched access rates already mirror its interstate switched access rates. CBET is a facilities-based CLEC operating in Ohio. CBW is a facilities-based wireless service provider licensed by the Federal Communications Commission ("FCC") and operates in Ohio, Kentucky and Indiana. CBAD is a long distance provider, as well as a CLEC in Ohio and a number of other states.

The Commission has invited comment on a proposal by Staff, pursuant to recently-adopted R.C. § 4927.15, that would allow carriers who are required to reduce their intrastate access charges to recover lost revenues from an Access Reform Fund ("ARF"). Under the proposed plan, CBT, CBET, CBW and CBAD would all be required to pay a proportion of their intrastate retail telecommunications service revenues into the proposed ARF to subsidize the access charge reductions of the ILECs that do not already mirror their interstate rates. Cincinnati

Bell hereby submits comments on the proposed plan and responds to the specific questions posed by the Commission in Appendix B.

These Comments are organized into several sections. First, Cincinnati Bell provides an overview of its ideas on intrastate access charge reform, which go to whether the proposed Staff plan should be implemented at all or, if so, how its structure should be revised. Second, Cincinnati Bell addresses the specific questions raised by the Commission in Appendix B. Third, Cincinnati Bell comments on specific plan provisions that were not directly implicated by questions on Appendix B. Last, Cincinnati Bell addresses some issues that were not addressed in the Staff's plan that should be addressed if a plan is implemented.

II. GENERAL COMMENTS ON INTRASTATE ACCESS CHARGE REFORM

Cincinnati Bell is not fundamentally opposed to the concept of requiring all Ohio local exchange carriers to mirror their interstate switched access rates (assuming appropriate processes are used to do so), but opposes any plan that shifts revenue recovery burdens onto other carriers and their customers.

CBT, AT&T, the former Verizon and the former Sprint ILECs have previously reduced their intrastate switched access rates to mirror their interstate rates. These carriers and their end users had to bear the burden of these access charge reductions. No other carriers were required to compensate those ILECs for the loss of access revenue. CBT and AT&T each absorbed the reductions without cost recovery from customers. Verizon[1] and Sprint[2] were permitted to implement state subscriber line charge ("SLC")-type charges on their own customers to recover

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[1] Opinion and Order, *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI (July 19, 2001).

[2] Opinion and Order, *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI (June 28, 2001).

at least part of the lost switched access revenues. Despite long-running calls for them to do so, the remaining Ohio ILECs, predominantly small and rural carriers, have not been required to reduce their intrastate access rates. Historically, those companies have charged low rates for local service[3] and have earned a much larger portion of their overall income from switched access charges. The sole beneficiaries of intrastate access charge reductions are the interexchange carriers ("IXCs") that originate and terminate intrastate long distance calls to customers of those ILECs. Inexplicably, Commission Staff proposes to shift the cost of those access charge reductions onto other Ohio carriers and their customers, as opposed to the customers of those ILECs that would be required to reduce access charges (so-called "eligible carriers"). The customers of the eligible carriers make and receive intrastate long distance calls and they should bear those costs, not unrelated parties.

The Commission should not move forward with a plan that asks all Ohioans to contribute towards keeping local service rates low for this small subset of consumers without a thorough analysis of the impact of the access charge reductions on the eligible carriers, exploration of all possible alternative revenue sources within the affected companies, and a comparison of the rates of the companies to be subsidized with the rates of companies that would be required to contribute.

At a time when citizens across the country are demanding less government intervention in the private sector and more fiscal responsibility, the idea of creating a new government-sponsored subsidy seems incongruous. While the Commission's apparent goal is to eliminate subsidies that are currently contained in intrastate switched access rates, the solution is not to

[3] See, for example, The New Knoxville Telephone Company at $5.60 per access line and The Ridgeville Telephone Company at $6.25 per access line.

replace it with a new express subsidy arbitrarily extracted from sources that have no relationship to the costs that are being subsidized. The economically efficient approach would be to remove the subsidies altogether and to assign costs where they belong – with the parties that cause them. The Staff's plan would remove the subsidy costs from IXCs (who have a direct nexus to the access charges, as they actually use the local networks of the affected carriers) and shift them onto all other Ohio carriers and their customers, who have nothing to do with causing the costs.

This proceeding was initiated as a result of SB 162, which mandated that any reduction in intrastate access rates had to be "revenue neutral." Presumably, that command was the genesis of the ARF. But the mechanical implementation of an ARF is not the most appropriate method of maintaining revenue neutrality. In fact, it would be antithetical to the basic competitive principles embodied in SB 162 and elsewhere in Ohio law. The very premise of SB 162 was to modernize the Ohio telecommunications statutes to reflect the competitive markets in which services are provided today. With the exception of rates for basic local exchange service ("BLES"), SB 162 leaves most pricing to market forces. Recognizing that competitive forces set prices more efficiently than do regulatory mandates, the General Assembly chose to deregulate the pricing of services.

Remarkably, there is an exception to the regulation of BLES rates that is specifically directed at the type of access reform contemplated by the Commission, yet Staff's plan ignores it altogether. Ohio Revised Code § 4927.15(B) makes a specific exception to the otherwise strict limitations on BLES price increases and allows an ILEC to increase its BLES rates as much as necessary to recoup revenues lost due to access charge reductions.[4] This exception was an unmistakable signal from the General Assembly that it *expected* revenue neutrality to be accomplished through rate rebalancing. The statute uses the phrase "any resulting rate changes necessary to comply with division (B) or (C) of this section." That plainly indicates that the General Assembly believed that rate increases would be *necessary* to maintain revenue neutrality. It certainly did not indicate that it expected the primary method for maintaining revenue neutrality would be an external fund collected from other parties.

The Commission cites Ohio Revised Code § 4927.15(C) as its general authority to implement an ARF. But, having the statutory authority to "create and administer mechanisms for carrier access reform" does not mean that the Commission should exercise that authority or that it should exercise it to create an ARF. The Commission should first determine whether existing intrastate access rates are unreasonable – it is not automatically given that rates are unreasonable just because they are higher than interstate rates. Each company whose access rates would be affected should be allowed to defend the reasonableness of its rates.

The concept of "revenue neutrality" in SB 162 should not be interpreted as requiring an insurance fund. Utility ratemaking has always been about providing utilities with the *opportunity* to earn a reasonable return, not about guarantees. CBT believes that a threshold inquiry needs to occur before the Commission implements an ARF. Namely, eligible carriers should have to demonstrate in detail what their revenue shortfalls would be through reducing intrastate access charges and to demonstrate that they have exhausted reasonable opportunities to raise such revenues from other services. For example, if an eligible ILEC is charging a low

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[4] Rates for non-BLES services are not regulated, so there was no need for any provision authorizing rates increases for other services to accomplish revenue neutrality.

monthly rate for local service, it would seem inappropriate for that company to automatically draw support from an ARF funded by other companies that already charge higher rates for local service. The eligible ILEC should first raise its own rates to at least the level of the contributing carriers. The Commission should obtain as much data as necessary to determine that an eligible carrier has exhausted internal revenue opportunities before assessing other carriers to provide that revenue. All participants in this proceeding should have access to the data (subject to a reasonable protective order as necessary) in order to independently test assertions that more revenue is necessary.

Ohio telecommunications policy is to encourage competition and economic efficiency. Subsidies should be removed to the maximum extent possible. Ohio Revised Code § 4927.02 sets forth the policy objective to "not unduly disadvantage providers of competing and functionally equivalent services." To allow local service rates to be subsidized by outside funding sources acts to insulate those services from competition. SB 162 was intended to expose all services to competition, not shield them. No competitive entrant enjoys such a subsidy, but has to bear the full cost of providing its service (and, if the ARF were implemented, would also bear the cost of subsidizing its competitor). Even where a subsidy may be appropriate (which is rare), before a company should be granted new external financial support, some demonstration of need should be made. In that regard, the federal universal service program has always used some form of benchmarking to determine when support is appropriate. The Staff's plan does not incorporate any such standards and would simply replace every dollar of reduced access revenue with a dollar from the ARF.[5]

[5] While Section 16(a)(ii) of the Staff plan would require price cap eligible carriers to gradually reduce their ARF support, with the option to replace that revenue through an end-user fee, no such reduction requirement is placed on non-price cap eligible ILECs.

As currently structured, the Commission appears poised to implement an ARF and seeks data only to know how much to pay each company that reduces access rates and how much to collect from each contributing carrier. The Commission's role should be far more than a mere calculator. Data ought to be gathered and thoroughly analyzed before any decisions are made about what to do. The FCC has realized the importance of data gathering in developing policy to the extent that it now ensures that policy analysis is data driven. Without the benefit of data, decisions are made on intuition or guesswork instead of facts, where the data might show otherwise. At this point, no one knows the degree to which eligible carriers will be required to reduce access charges, the amount of the revenue shortfall any carrier will need to make up, or the degree to which revenue may be generated by raising rates for other services. These important matters should be considered prior to implementing an ARF or assessing other carriers to contribute to the ARF.

In addition to the data that would be required by Appendices C and D, the Commission should require the submission of additional data from all Ohio LECs to assist in these determinations. The Commission should require at a minimum:

1. A list of all rates for every type of local switched service offered, including BLES and any bundles that include BLES, whether the rates are set by tariff, contract or otherwise;

2. The number of lines in service for each such category of local switched service, both business and residential;

3. The billed revenue for each such category of local switched service;

4. The amount of any interstate or intrastate SLC charged for each such category of local switched service.

Cincinnati Bell reiterates its request that the Commission gather a broader universe of data about the "eligible companies" in order to analyze their businesses as a whole and determine where it is appropriate for them to help themselves by rebalancing rates before obtaining external help. Cincinnati Bell's intentions in this regard are not to slow down the process, but to ensure that any plan is done correctly, based on facts. It may take a little more time to do it right – however, there is no specific deadline for access reform (or any requirement that the Commission do this at all) – but in the long run basing a plan on sound public policy is more important than a rush to judgment.

The problem of access reform has been with us for many years. CBT has been mirroring interstate access rates since 2000. The Commission has delayed access reform for the small ILECs for at least that long. Taking a few more months to conduct a comprehensive analysis and to determine whether a revenue replacement fund is really necessary will not produce dire consequences. Although the IXCs that currently subsidize the small and rural ILECs via the higher intrastate access rates at issue here will see their much desired access rate reductions delayed, a slight delay is warranted to ensure the final plan is well-researched and well-reasoned to achieve a policy that promotes a competitive telecommunications marketplace and protects the interests of all Ohio telecommunications consumers, not just those of the small and rural ILECs.

III. RESPONSES TO SPECIFIC APPENDIX B QUESTIONS

1) ***The Staff's proposed plan for restructuring of ILEC access rates addresses the impact of access rate reductions only and does not address the impact of access line loss on the rural ILECs' POLR obligation. Should the impact of access line loss on revenue be addressed as part of the access restructuring plan? What are the advantages and disadvantages of such an addition to the restructuring plan?***

The plan should not address the effect of access line loss. The revenue neutral requirement in Revised Code § 4927.15(B) only applies to revenue lost because of access rate reductions. It has nothing to do with access line loses, so the plan should be limited to the impact of reductions to intrastate switched access rates. It should not attempt to protect small and rural ILECs from losses in switched access revenue due to access line losses. All ILECs have lost lines and continue to do so as landline local exchange customers switch to competitive alternatives such as CLECs, cable VoIP, over-the-top VoIP and, perhaps most significantly, wireless. The Commission should not interfere with the competitive marketplace and attempt to shield one group of carriers from such competition. Moreover, it would be entirely inappropriate for the Commission to force other providers, in many cases the very providers that are competing against the small and rural ILECs, to compensate them for the revenue lost to competition.

SB 162 was designed to free ILECs from many of the outdated regulatory constraints that have hampered their ability to compete on a level playing field with non-ILEC providers. The rules the Commission recently finalized in Case No. 10-1010-TP-ORD to implement SB 162's retail service provisions will enhance the small and rural ILECs' ability to offer services in a manner designed for a competitive marketplace. The Commission should let consumers be the arbiters of who wins and who loses in today's competitive telecommunications market. If a small or rural ILEC or any other ILEC's POLR obligations are jeopardized by the presence of competitive alternatives to an ILEC's services, the Commission should address the situation on a case-by-case basis. Under no circumstances should the Commission try to anticipate what might happen to certain ILECs and intervene in the market to protect an entire group of companies from the potential impacts of competition.

2) Although the Staff's proposed plan does not require interconnected voice over internet protocol (VoIP) service providers to contribute to the restructuring fund, it requires a provider of telecommunications services to a provider of interconnected VOIP-enabled services to pay the mandatory monthly contribution related to those VoIP services. As VoIP traffic volumes terminating on the eligible ILEC's networks increases, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILEC's networks?

The proposed method of assessing VoIP providers would be very ineffective and result in an economically inefficient assessment that is not competitively neutral since the majority of VoIP retail revenue may not be subject to assessment. Very little is known about the arrangements that VoIP providers have with telecommunications service providers and how the VoIP providers compensate the telecommunications services providers for interconnection related services. Given the long-running debate over what is a "telecommunications service" in the context of VoIP, it is not clear what if any services this provision would encompass. Service providers to interconnected VoIP providers may only be providing ordering support and an interface between the IP network and the PSTN. The revenue for these services may bear little relationship to the retail intrastate revenue earned by the VoIP carrier from its customers.

If the Commission establishes the ARF, it should require interconnected VoIP providers to contribute directly to the fund based on their end-user retail revenue. When the Commission released its entry opening this proceeding there was some question regarding the authority of states to impose revenue-based assessments on interconnected VoIP providers. However, the FCC has since released a Declaratory Ruling[6] in which it concludes that state universal service fund assessments on nomadic interconnected VoIP service are not preempted if they are consistent with the FCC's contribution rules and the state does not assess intrastate revenues associated with services provided in another state. This Declaratory Ruling only addresses nomadic VoIP, the service at issue there, because there was never any question about the states' ability to assess fixed VoIP service providers. Therefore, Ohio could assess both nomadic and

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[6] Declaratory Ruling, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, FCC 10-185, (released Nov. 5, 2010).

fixed VoIP providers for the proposed ARF. Section (8) of Staff's plan should be changed accordingly and Section (9) should be deleted.

The fact that the Staff proposal does not call the ARF a "universal service" fund does not preclude assessment of VoIP providers. Regardless of the name given to the Ohio mechanism, it is a type of universal service assessment. Furthermore, assessing VoIP providers directly will eliminate the inequities and enforcement problems inherent in the indirect assessment proposed by Staff. All providers that would be assessed the ARF, including VoIP providers, are already contributors to the federal USF and thus already calculate interstate and intrastate end-user retail telecommunications and/or interconnected VoIP revenue. The only issue Ohio would need to address would be to ensure that its assessment mechanism relative to nomadic VoIP providers is consistent with the approach followed by other states that also assess nomadic VoIP provider intrastate revenue.

3) The Staff's proposed plan includes a provision for recalculating the size of the restructuring mechanism for each eligible ILEC every two years after the initial restructuring mechanism becomes operational. Is this a reasonable time frame? If not, how often should the recalculation of the fund occur? Should the fund recalculations for price-cap eligible ILECs and nonprice-cap eligible ILECs be performed at different intervals?

If the Commission moves forward with an ARF, the size of the fund and contribution assessment percentage should be recalculated annually. To wait two years between adjustments is unreasonable. By way of contrast, the federal USF contribution assessment is adjusted quarterly. Cincinnati Bell is not suggesting that quarterly adjustments should be done with an ARF, but annual adjustments would be simple to administer. The data is easily collected annually and this would help keep the fund size more in line the current need. Eligible carriers should not be compensated based on data from two years prior, nor should contributing carriers be assessed based on revenue from two years prior. If access minutes continue to decline as they have, the Staff's proposal would allow eligible carriers to continue to draw from the ARF despite declines in demand. The statute only requires revenue neutrality caused by mandated decreases in *rates*, not demand quantities, so the effect of demand reductions must be filtered out on a current basis. To only adjust the fund parameters biennially would preserve and compensate eligible carriers for demand levels that no longer exist. The recalculation period should be the same for both price cap and non-price cap eligible ILECs.

Moreover, calculation of both the fund size (determined based on eligible carrier data) and the assessment percentage (based on contributing carrier data), should use data from the same year. As Appendices C and D are currently written, it is unclear whether the proposal is to determine the fund size based on data from 2009, but to assess contributing carriers based on 2010 revenue. Paragraphs 7 and 10 of the plan, state that 2009 data would be used for both. The most current year-end data available should be used for both calculations. Using older data for the eligible carriers would delay the impact of access line losses that are not compensable through the access reform "revenue neutrality" mandate. For these reasons, Section (15) of the proposed Staff plan should be changed to call for annual recalculation of the ARF based upon quantities for the immediately preceding year.

4) The Staff's proposed plan includes different methodologies for recalculating the size of the access restructuring mechanism for price-cap eligible ILECs than the methodology proposed for nonprice-cap eligible ILECs. Is this a reasonable approach?

If the Commission moves forward with an ARF, it should not use different methodologies for price-cap versus non-price cap eligible ILECs. No reason has been provided for doing so. Section (16)(a)(i) and 16(b)(i) of the plan as written would calculate the revenue requirement differently for price-cap and nonprice-cap eligible ILECs. For price-cap eligible ILECs, the ARF compensates them for the difference between current access rates and the access rates in effect before reductions, multiplied by the most recent year's minutes of use or other demand quantities. For nonprice-cap eligible ILECs, the plan would continually compensate them based upon the initial demand quantities, not those from the most recent year. This would replace revenues for the initial year in perpetuity, regardless of actual access usage.

Section (16)(b)(ii) suggests some type of adjustment for non-price cap eligible ILECs based on their percentage change in access lines. It is not clear whether this is intended to be an upward or downward adjustment, or both, or why this would be done. If Section (16)(b)(i) is changed to use current access minutes of use, as Section (16)(a)(i) does, there would be no need for a percentage of access line change adjustment. Eligible carriers should never be reimbursed for anything but access revenue losses caused by reductions in rates. The combination of using 2009 access revenues in perpetuity and the percentage change in access lines adjustment would divorce the ARF funding mechanism from the revenue neutrality issue. If access lines were to grow, but minutes of use decreased, the formula would actually increase the payments to nonprice-cap carriers, when they should decrease because access usage has decreased.

All eligible carriers should also be required to recover at least some of the reduction from their own customers. Under Section (16)(a)(ii) of the Staff's proposal, only price cap ILECs would do so and, then, only beginning in year three in annual increments. At a minimum, those same reductions should apply to all eligible carriers and they should be done annually beginning with the effective date of the plan, not every two years (Staff's proposal for the frequency of the recalculation process). No justification has been offered for favoring nonprice-cap eligible carriers in this regard.

But, rather than differentiating eligible carriers based on price-cap eligibility and making local rate adjustments after the fact, the Commission should require all eligible carriers to move their basic access line rates up to a benchmark level prior to receiving any money from an ARF. There are many ways in which a benchmark rate could be established. Cincinnati Bell suggests a reasonable benchmark would be the average retail rate (including any intrastate EUCL or SLC) of the ILECs whose intrastate access rates already mirror their interstate rates. This benchmark would ensure that the eligible ILECs are required to absorb a burden comparable to ILECs that have already adopted mirroring, while ensuring that their retail rates are not out of line with the rates of other ILECs. This approach would minimize the size of the ARF and reduce the burden that other Ohio consumers are asked to carry to keep rates low for a small subset of consumers.

5) The Staff proposes a third-party administrator to oversee the access restructuring fund. How should this third-party administrator be selected? What criteria for selecting a third-party administrator should be included in the selection process? Are there alternatives to a third-party administrator that the Commission should consider?

It is premature to address requirements for a third party administrator, when a determination has not yet been made as to whether an ARF is even necessary, or what the size of the fund would be.

6) The Staff proposes that the projected administration costs be included in the fund size calculation. How should a reasonable initial administration cost amount be estimated? How should it be calculated on an ongoing basis?

As stated above, it is premature to budget for administrative costs for a fund whose parameters are unknown. However, rather than including the administration costs in the fund, these cost should be recovered from the eligible carriers who receive the distributions from the fund. Once the size of the fund is known, a decision could be made whether there is any need for a third-party administrator or what would be a reasonable cost to administer the fund. It should be a fairly simple mathematical exercise to determine the amount each eligible carrier could withdraw and the appropriate assessment for each contributing carrier, which should not require substantial administration. In that regard, Ohio has a comparable system in place today that may provide guidance on the administrative requirements for the fund. The Ohio 9-1-1 coordinator (whose selection method and compensation are governed by Revised Code § 4931.60) collects contributions from wireless service providers and distributes the funds to counties. While the funds serve different purposes and have different constituencies, their general structure would appear to be similar and there may be an opportunity to share resources.

7) The Staff proposal includes a provision to allow the Commission to revisit the access restructure mechanism if the FCC takes specific actions. Is this a reasonable approach?

Rather than including a provision to revisit the access restructure mechanism if the FCC takes specific action, the Commission should consider deferring action on this proposal until the FCC adopts an intercarrier compensation reform plan. All of the access reform proposals the FCC has considered include a transition period for the reduction in intrastate rates. Of course, if the Commission does not wait for the FCC to act on intercarrier compensation reform, it would certainly be appropriate to revisit the ARF mechanism when the FCC acts if such FCC actions affect the basis for the fund.

8) In what ways, if any, can the Staff proposal be modified to address various contingencies including, but not limited to, carriers entering or exiting the Ohio market and mergers between and acquisitions of carriers doing business in Ohio?

With respect to eligible carriers, by definition there could be no new entrants, as the identify of ILECs was fixed in 1996. Likewise, it is highly unlikely that any eligible carrier would exit the market. For an ILEC to exit the Ohio market would require a Commission proceeding, such as an abandonment application, which should address whether any successor entity to its ILEC assets would be eligible for continued funding as to legacy access lines. The more likely issue with respect to ILECs would be mergers and acquisitions. Again, that would require a Commission proceeding, a change in control application, that could be used to manage the issue. That situation could be addressed by tracking the intrastate access usage over the former ILEC access lines separate from whatever other access lines the acquiring company may own in Ohio. This is already necessary with respect to those Ohio LECs that have some service areas with mirrored access rates and other service areas with non-mirrored access rates.

With respect to contributing carriers, carriers that enter would simply start contributing based on the established assessment rate. Carriers that exit would stop contributing when they no longer had intrastate service revenue. Mergers and acquisitions should not have any effect, as the resulting entities would continue to contribute based on their Ohio intrastate revenues. The main issue with respect to market entrance and exit would be timing of the fund recalculations. New entrants would not have had revenue included in the previous revenue base used to make the assessment calculations and those who exit would have been included in the contribution base, but would no longer be making contributions. Of course, there would likely be imbalances from year to year anyway, because overall intrastate revenues will not be precisely the same from year to year. The fund could become too large or too small in any given year because contribution rates were fixed on past revenues. Any changes to the fund due to market entry and exit would compound that effect. These are additional reasons why the fund size and contribution percentage should be recalculated annually, so the fund is kept as balanced as possible. If two years passed between recalculations, there would be much more opportunity for mismatches between contributions and withdrawals.

9) If a carrier believes that it is not a contributing carrier, how shall such a carrier inform the Commission of its belief? How should the Commission deal with such carriers?

The plan requires each contributing carrier to reports its intrastate retail telecommunications revenues and to pay monthly assessments. Carriers that do not believe they are contributing carriers would not file the report and would not make contributions. If carriers are wrong about their determinations of whether they are contributing carriers, the Commission has enforcement powers. Section (19) of the plan allows the Commission to take enforcement action against any contributing carrier that fails to provide the required information or to make the required contribution. In the event the Commission would take enforcement action against a party who did not believe it was a contributing carrier, it would raise that as a defense in the enforcement proceeding and the Commission would have to make a determination of whether the party was a contributing carrier.

IV. COMMENTS ON SPECIFIC PROVISIONS OF THE STAFF'S PROPOSAL NOT ADDRESSED BY APPENDIX B

A. Definitions

The definition of "contributing carrier" should include all interconnected VoIP providers as discussed above in response to Question 2 of Appendix B. It should also include wireless resellers. Currently, the definition of contributing carrier includes "wireless service provider" as defined in O.A.C. Rule 4901:1-6-01(OO). This has the effect of excluding resellers of wireless service. The definition of "wireless service provider" was crafted to dovetail with the general limitations in Revised Code § 4927.03(B)(1) on the Commission's jurisdiction over wireless service providers. But, for purposes of the proposed ARF, there should be no distinction because Revised Code § 4927.03(B)(1)(b) gives the Commission express authority over both wireless service and resellers of wireless service for purposes of § 4927.15(C), the authority the Commission relies upon to conduct this proceeding.

Without this change, wireless resellers would avoid contributing to the fund while facilities-based wireless providers would not. Wireless resellers, also known as Mobile Virtual Network Operators ("MVNOs") report intrastate and interstate end user telecommunications revenue for FCC Form 499 purposes, so the data necessary for the assessments is readily available to them. As the FCC observed in its recent VoIP Declaratory Ruling, states have successfully resolved the allocation of wireless intrastate revenues for purposes of state universal service contributions using the Mobile Telecommunications Sourcing Act.[7] There is no reason why Ohio cannot do the same. If a contribution mechanism is adopted, it should apply to all providers, whether facilities-based or not.

B. When to Implement Access Rate Reductions

Section (2) of the Staff plan would require eligible ILECs to immediately mirror their interstate access rates as of the date established for the commencement of operation of the ARF. Cincinnati Bell urges the Commission not to move forward with this plan without requiring rate rebalancing first. While the plan does have a framework for phasing out the fund (but only with respect to price cap eligible carriers), Cincinnati Bell suggests that creating a fund and then gradually phasing it out is backwards. Eligible carriers should first exhaust rate rebalancing before seeking outside funding. If the Commission is concerned about rate shock caused by

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[7] *Id*. at para. 21.

immediate rebalancing, a way to minimize the immediate impact on carriers and consumers would be to phase in access rate reductions over several years in coordination with gradual increases in other rates. If done in that order, no fund may be necessary.

C. Use of 2009 Data

Section (7) of the Staff plan would establish the initial size of the fund based on the rates in effect as of July 1, 2009 and 2009 demand quantities. Using 2009 data would be improper for both legal and economic reasons. Revised Code § 4927.15(B) only applies if the Commission orders a reduction of "rates for carrier access that are in effect on the effective date of this section," which was September 13, 2010. The statutory requirement that access rate reductions be "revenue neutral" cannot apply retroactively. Only rates in effect on or after September 13, 2010 are relevant. And since no access charge reductions have yet occurred, the Commission cannot use revenues any older than 2010 for purposes of establishing the benchmark revenue levels used to determine the size of the fund.

Using 2009 data would compensate eligible carriers for reductions in access revenue that had already occurred before the statute was in effect or any rate reductions had occurred. Any access revenue reductions between 2009 and any date the ARF actually commences would have nothing to do with access reform. Including those revenue losses in revenue neutrality would shift additional burdens onto other carriers and their consumers that was not caused by access rate reductions. It would improperly compensate eligible carriers for *both* access rate reductions *and* unrelated access line losses. The only valid purpose of the ARF is to maintain revenue neutrality caused by access charge reductions after September 13, 2010. All LECs have been experiencing reductions in access revenues due to line losses and there is no basis for protecting the small and rural ILECs at the expense of all other carriers and their customers.

V. ADDITIONAL ISSUES NOT ADDRESSED IN THE STAFF PROPOSAL

A. The Commission Should Expressly State That Contributions to an ARF May Be Recovered From the Contributing Carriers' End Users.

The Staff proposal calls for assessing intrastate service revenues of all Ohio service providers, but does not explicitly state that these assessments may be recovered from end users. As a result of SB 162, the Commission no longer has authority to regulate the rates for non-BLES services. With respect to BLES, Revised Code § 4927.15(B) expressly provides that any rate changes necessary to comply with division (B) or (C) of that section would be in addition to any rate increase otherwise authorized under § 4927.12. As the ARF assessments would be necessary to comply with the Commission's implementation of an ARF pursuant to § 4927.15(C), the Commission should clarify that contributing carriers could pass the cost of their contributions through to end users.

B. IXCs Who Charge Higher Intrastate Rates in Ohio Should Be Required To Flow Through the Benefit of Access Charge Reductions.

The Staff proposal does not address rates charged by IXCs for intrastate interexchange services. As this proceeding and the ARF originated from complaints by IXCs about intrastate access charges, it is only appropriate that if any IXC charges Ohio customers higher rates for intrastate toll calls, it should be required to eliminate the rate disparity between its Ohio rates and its interstate toll rates effective upon the date mirroring goes into effect. The Commission ordered IXCs to flow through access rates savings in response to previous mirroring requirements.[8] Otherwise, the exercising of mirroring intrastate access rates and creation of an

[8] Opinion and Order, *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI (January 11, 2001).

ARF would just provide the IXCs with windfalls. If mirroring is phased in over a period of years, these toll rate reductions could be phased in proportionately.

VI. CONCLUSION

The Commission should not adopt the ARF, certainly not at this time on this record. Instead, the Commission should gather data about rates and revenues for all of the services provided by eligible carriers and determine how those carriers can rebalance their own rates to recover revenues lost through access rates reductions before any fund is created whereby other carriers and their customers are assessed to subsidize them. If the Commission then decides that an ARF is necessary, the structure of the ARF should be amended in accordance with Cincinnati Bell's comments herein.

Respectfully submitted,

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