FILE

29

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

VERIZON'S INITIAL COMMENTS REGARDING
STAFF'S PROPOSED ACCESS RESTRUCTURING PLAN

By its November 3, 2010 Entry ("Entry"), the Commission called for comments regarding the staff's proposed "Access Restructuring Plan," set forth in Appendix A thereto, and also asked parties to address the specific questions posed in Appendix B. Verizon[1] hereby submits its response.

Verizon supports staff's proposal to treat all Ohio incumbent local exchange carriers ("ILECs") alike by capping their intrastate switched access rates at the (generally) lower level of their interstate access rates, which the Federal Communications Commission ("FCC") has approved. This aspect of staff's plan is consistent with Verizon's longstanding position that the Commission should continue the access charge reform it started in 2001, when it reduced the intrastate switched access rates of the largest Ohio ILECs to interstate levels.[2] However, Verizon opposes staff's proposal to establish an "Access Restructuring Fund" ("ARF") to replace the revenue some ILECs might lose if the Commission reduces their access rates.

[1] As used herein, "Verizon" includes MCImetro Access Transmission Services 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 services in the state of Ohio, collectively d/b/a Verizon Wireless. While Verizon Wireless participates in these comments as an affiliate of the other Verizon entities named herein, it uses minimal to no intrastate switched access services, will not benefit from intrastate access reductions, and participates in this proceeding solely to oppose any attempt to impose the costs of any access revenue replacement mechanism on Verizon Wireless and its customers.

[2] *See In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, Opinion and Order, Case No. 00-127-TP-COI (Jan. 11, 2001) ("*Intrastate Access Charge Order*") (requiring Ameritech Ohio (now AT&T Ohio), Cincinnati Bell Telephone Company, Sprint/United (now CenturyLink), and Verizon to reduce their intrastate switched access rates to mirror their interstate switched access rates).

The Commission did not establish any such fund when it previously required other Ohio ILECs to mirror their interstate rates, and there is no requirement in Substitute Senate Bill 162 ("Sub. S.B. 162") or elsewhere that would dictate a different result now. Indeed, there is no public policy justification for guaranteeing ILECs unconditional, unquestioned revenue recovery through an ARF mechanism that automatically would replace lost access revenues. Shifting the revenue burden from one carrier-funded source (access rates) to another (an ARF) does nothing to solve the fundamental economic inefficiencies and competitive harms caused when ILECs rely on their captive competitors for their operating revenues, instead of looking to their own end-user customers.

Accordingly, the Commission should move forward with the proposed access rate cap, but allow the affected Ohio ILECs to replace any lost access revenues through rebalancing of their retail rates, rather than through the proposed ARF (or any similar fund). Indeed, Sub. S.B. 162 expressly contemplates this approach. Nevertheless, if the Commission considers establishing a fund (which it should not), the Commission should not adopt staff's proposal as-is. Among other things, the Commission should not require wireless carriers (and, ultimately, their customers) or Voice over Internet Protocol ("VoIP") providers to contribute to the fund.

I. BACKGROUND.

Unlike the market for retail services, the market for wholesale switched access services in Ohio is not competitive. Long distance carriers (sometimes called interexchange carriers or "IXCs") and other providers subject to access charges cannot choose whom their customers call or what local exchange carrier ("LEC") serves the calling or called party. Under existing legal and regulatory requirements, these providers generally must carry and complete any call a customer places and must pay whatever switched access rates the LEC assesses for calls that originate and terminate on the public switched telephone network ("PSTN"). The FCC has recognized that this arrangement creates the risk that, absent regulatory intervention, some LECs will charge unjust and unreasonable switched access rates,[3] which, in turn, creates a windfall for those LECs while harming access charge payors, their customers, and competition in general.

Excessive implicit subsidies in intrastate switched access rates are vestiges of an outdated regulatory approach, designed solely to promote wireline universal service objectives in monopoly local telephone markets.[4] But the federal Telecommunications Act of 1996 opened local exchange markets to competition, and the myriad technological advances in recent years have led to consumers today being able to obtain service from a wide variety of providers, including traditional wireline ILECs, wireline competitive local exchange carriers ("CLECs"), wireless carriers, and cable and VoIP providers.[5] In most cases, consumers can choose from a host of different retail providers, and many consumers no longer want or need wireline service.

For example, in April 2009, the Ohio Telecom Association ("OTA") reported that, between 2001 and 2008, Ohio ILECs lost 43% of their access lines to competition and alternative technologies.[6] As of the date of OTA's report, there were 826 companies selling a range of voice and data services to Ohio residential and business customers, including landline, cellular,

---

[3] *See, e.g., In re Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking ("*CLEC Rate Cap Order*"), 16 FCC Rcd. 9923, 9936 (2001) ("We … acknowledge that the market for access services does not appear to be structured in a manner that allows competition to discipline rates.").

[4] *See Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (2000) ("*CALLS Order*") at ¶ 23.

[5] *See CLEC Rate Cap Order* at ¶ 21 ("Although competition for access services existed to some extent prior to 1996, the 1996 Act created new opportunities for competing access providers by opening the local exchange market to competition.").

[6] *See* Telecom Competition in Ohio, Ohio Telecom Association (April 2009) ("OTA Report") at 2. *See also id.* at 6 ("Traditional home telephone service is in decline, rapidly being replaced by wireless, VoIP and Internet communications.").

satellite, cable and VoIP providers.[7] Among these, wireless communications now make up "the biggest sector of the telecom market in Ohio," with 11 different wireless providers serving 9.1 million cell phone users in Ohio at year-end 2008 – up 21% since 2005 and continuing to rise.[8] The OTA estimated that 15% of homes in Ohio had eliminated local wireline phone service and relied exclusively on wireless communications by the end of 2008, with that number trending upward.[9] This is consistent with data from across the country, as the FCC estimated that, by the end of 2008, 90 percent of Americans had a mobile wireless device.[10] The Centers for Disease Control estimated that, during the last half of 2009, "[o]ne out of every four American homes (24.5%) had only wireless telephones" and "one of every seven American homes (14.9%) had a landline yet received all or almost all calls on wireless telephones."[11] That trend has continued.

Similar trends are visible in broadband and VoIP services, as there were an estimated 20 million "cable telephone" customers nationwide as of the time of OTA report.[12] In Ohio, there were 21 cable television companies, two direct broadcast satellite providers, and 88 broadband providers by the end of 2008, with 95% of Ohio homes and business capable of receiving broadband from a landline or terrestrial wireless network.[13] The number of broadband and VoIP customers has increased in Ohio since then.

---

[7] *Id.* at 4.

[8] *Id.* at 2.

[9] *Id.* at 9.

[10] *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, Fourteenth Report, FCC 10-81, W.T. Docket No. 09-66 (2010).

[11] Blumberg S.J., Luke J.V., "Wireless substitution: Early release of estimates from the National Health Interview Survey, July-December 2009" (National Center for Health Statistics, May 2010). Available from: http://www.cdc.gov/nchs/nhis.htm.

[12] OTA Report at 3.

[13] *Id.* at 11, 13.

In view of this profound shift from wireline to other communications options, the Commission should be increasingly concerned with Ohio wireline incumbents continuing to receive subsidies paid by other providers (namely, access charge payors) that, in many cases, are competitors of the ILECs. The FCC repeatedly has observed that economically efficient competition and the consumer benefits it yields cannot be fully achieved as long as local exchange carriers seek to recover a disproportionate share of their costs from other carriers (*i.e.*, access payors), rather than from their own end users.[14] Such irrational access rate structures lead to what the FCC has termed "inefficient and undesirable economic behavior"[15] and, ultimately, to higher prices for consumers.

Accordingly, "[w]ith the passage of the 1996 Act, the [FCC] determined that it was necessary to make substantial revisions to access charges,"[16] because continuing to allow LECs to shift their costs onto other providers through unduly high access rates would be "inconsistent with the competitive market that we seek to encourage for access service."[17] Thus, the FCC ordered various access charge reductions, including restructuring and reducing the interstate access rates of federal price-cap carriers through the *CALLS Order*, *supra*, and substantially reducing the interstate access rates of rate-of-return carriers through the *MAG Order*, *supra*. Through these and other orders, the FCC has "instituted reforms that changed the manner in which ... LECs recover access costs by aligning the rate structure more closely with the manner

---

14 *See generally CLEC Rate Cap Order*, *supra*; *CALLS Order*, *supra*; *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order*").

15 *CALLS Order* at ¶ 129.

16 *Id.* at ¶ 18.

17 *CLEC Rate Cap Order* at ¶ 33.

in which costs are incurred."[18] The bottom line is that "[t]he result of the [FCC]'s efforts has been a steady reduction in access charges ...."[19]

For its part, this Commission has long recognized the importance of setting switched access charges at appropriate levels and has echoed the corresponding access policy decisions announced by the FCC. Indeed, the Commission repeatedly has emphasized the economic and consumer benefits associated with a rational access charge regime and, during the 1980s and 1990s, consistently required Ohio carriers to mirror their interstate access rates set by the FCC.[20]

Following the 1996 Act, the Commission initiated an investigation to consider whether and how the intrastate access charges of jurisdictional ILECs should be modified.[21] In response to the FCC's *CALLS Order*, the Commission required the large Ohio ILECs subject to that order – including Ameritech Ohio (now AT&T Ohio), Cincinnati Bell Telephone Company and Sprint/United (now CenturyLink) – to reduce their intrastate access rates to mirror their interstate *CALLS* rates.[22] The Commission determined that reducing those ILECs' intrastate access charges to *CALLS* levels would result in numerous benefits, including "lower rates to toll customers," "more efficient competition," "certainty for some of the industry," and "stronger

---

[18] *CALLS Order* at ¶ 18.

[19] *CLEC Rate Cap Order* at ¶ 8.

[20] *See, e.g., In the Matter of the Commission's Investigation of Intrastate Access Charges*, Case No. 83-464-TP-COI, Opinion and Order at 36 (Mar. 12, 1987) (requiring all Ohio ILECs to cap intrastate rates at interstate levels); *In the Matter of the Complaint of AT&T Communications of Ohio, Inc. v. Ameritech Ohio*, Case No. 96-336-TP-CSS, Opinion and Order at 18-21 (Sept. 18, 1997) (requiring Ameritech to reduce its intrastate switched access rates by mirroring its interstate rates).

[21] *See In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI (Jan. 20, 2000).

[22] *In the Matter of the Commission's Investigation into the Modification of Intrastate Access Charges*, Case No. 00-127-TP-COI, Opinion and Order at 18 (Jan. 11, 2001) ("*Intrastate Access Charge Order*").

investment opportunities."[23] The Commission deferred ruling on the intrastate access rates of the other Ohio ILECs, pending FCC action in two ongoing dockets.[24]

However, after the FCC acted in those two dockets,[25] and even after the Commission itself acted to cap all Ohio *CLECs'* switched access rates,[26] the Commission has not taken any further action in the generic access charge reform docket. Nor has it, until now, taken further steps to address the intrastate switched access rates of Ohio ILECs following the 2001 *Access Charge Order*, despite many prior requests.[27] As a result, several Ohio ILECs – including large carriers like CenturyLink and Windstream – have avoided any scrutiny of their intrastate switched access rates for years, with many of them now charging intrastate switched access rates that are higher than those charged by other large Ohio ILECs and CLECs, and significantly higher than their own interstate rates for the same services.

Maintaining these ILECs' intrastate access rates at current levels clearly would be at odds with the Commission's stated policies regarding access charges. Indeed, the Commission has advised the FCC that it "has a long established policy of mirroring interstate access rates" and

---

[23] *Id.* at 16.

[24] *Id.* at 15.

[25] The federal rulings the Commission was awaiting were issued within a matter of months after its *Intrastate Access Charge Order*. *See In the Matter of Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, And Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244 (May 23, 2001); *MAG Order, supra* (Nov. 8, 2001).

[26] *In the Matter of the Establishment of Carrier-to-Carrier Rules*, Case No. 06-1344-TP-ORD, Opinion and Order (Aug. 22, 2007), at 55-57.

[27] The Commission denied requests to examine the intrastate switched access rates of small and rural ILECs in the context of its rulemaking on carrier-to-carrier rules. *Id.* at 55. Similarly, while some carriers (including Verizon) have brought individual complaint proceedings challenging the intrastate switched access rates of certain Ohio ILECs as excessive, those proceedings have been pending for years. *See, e.g.*, Entry at 1 (citing *In the Matter of the Complaint of Verizon North, Inc., et al. v. CenturyTel of Ohio, Inc., et al.*, Case No. 07-1100-TP-CSS (filed Oct. 5, 2007)).

that it needs no federal inducement to pursue access reform because it has already concluded that "reductions in intrastate access rates serve the public good."[28]

II. THE STAFF-PROPOSED ACCESS RESTRUCTURING PLAN.

As demonstrated above, the Commission has long recognized the need for access charge reform. The enactment of Sub. S.B. 162 confirms that the Ohio legislature also sees the need for a rationale access regime. As the Commission noted in its Entry initiating this investigation, Sub. S.B. 162, which became effective in September 2010, "revises state law as it pertains to the provision of telecommunications services."[29] Among other things, Sub. S.B. 162 articulates that:

> It is the policy of this state to: ... (3) Rely primarily on market forces, where they exist, to maintain just and reasonable service levels for telecommunications services at reasonable rates ... [and] (9) Not unduly favor or advantage any provider and not unduly disadvantage providers of competing and functionally equivalent services.[30]

As the Commission recognized when it undertook intrastate switched access reform a decade ago, market forces do not operate to keep intrastate switched access rates at reasonable levels in Ohio,[31] and there have been no subsequent market developments that would alter that conclusion. Because the present access regime conflicts with state policy objectives, Sub. S.B. 162 expressly authorizes the Commission "to address carrier access policy and to create and administer mechanisms for carrier access reform ...."[32] In exercising this authority, the Commission, among other things, "may order changes in a telephone company's rates for carrier

---

[28] *Developing a Unified Intercarrier Compensation Regime*, Comments of the Public Utilities Commission of Ohio, CC Docket No. 01-92 (Oct. 25, 2006) ("*Ohio PUC Comments*") at 42-43, 27.

[29] Entry at 1.

[30] Section 4927.02(A), Revised Code.

[31] *See, e.g.*, *Intrastate Access Charge Order* at 13 (acknowledging that, with respect to intrastate access rates, "actual reductions have largely resulted only from regulatory intervention").

[32] Sec. 4927.15(C), Revised Code.

access in this state …."[33] Further, there can be no question that the authority to order access rate "changes" includes the authority to order access rate ***reductions***, because the legislation specifically contemplates the circumstance in which "the public utilities commission ***reduces*** a telephone company's rates for carrier access that are in effect on the effective date of this section."[34] Exercising this explicit statutory authority to reduce intrastate access rates would be entirely consistent with the FCC's "steady reduction in access charges"[35] and this Commission's stated view that "reductions in intrastate access rates serve the public good."[36] Indeed, the legislature could not have provided a clearer signal that it expects the Commission to reduce the intrastate switched access rates of Ohio ILECs that heretofore have escaped scrutiny.

To that end, Commission "deem[ed] it appropriate to open a generic investigation into intrastate carrier access reform as authorized by Sub. S.B. 162" and has asked for comment on an Access Restructuring Plan prepared by Commission staff.[37] The proposed plan provides that "[a]ll ILECs shall set the rates for intrastate switched access services at a level that does not exceed the rates it [*sic*] is allowed to charge for the same interstate switched access services by the Federal Communications Commission (FCC) …."[38]

However, staff also proposes "an intrastate switched Access Restructuring Fund (ARF)" from which "[a]ll eligible ILECs are entitled to receive monthly disbursements … to offset the reduction in [their] intrastate switched access service revenues resulting from the rate reductions

[33] Sec. 4927.15(B), Revised Code.

[34] *Id.* (emphasis added).

[35] *CLEC Rate Cap Order* at ¶ 8.

[36] *Ohio PUC Comments* at 27.

[37] Entry at 1-2 and Appendix A.

[38] *Id.* at 2.

…."[39] Staff recommends financing the ARF solely through contributions from ILECs, CLECs, providers of telephone toll service, wireless carriers, and carriers providing telecommunications services to providers of interconnected VoIP services.[40]

Although Verizon supports staff's recommendation to reduce switched access rates, Verizon strongly opposes staff's proposal to create an ARF to replace revenue lost due to the necessary access charge reductions, and particularly objects to the extent staff would have wireless carriers and VoIP providers contribute (directly or indirectly) to the fund.

A. Staff's Benchmark Proposal Is Appropriate For Ohio.

Both the Ohio legislature and the FCC have recognized that market-based mechanisms are the best way to produce efficient prices and promote the public interest.[41] Negotiated intercarrier compensation agreements are the best long-term solution to ensuring the efficiency of telecommunications markets in the face of substantial technological change. Among other advantages, this approach adapts more easily to changing technologies, encouraging their introduction without the need to modify the regulatory regime.

However, in the absence of commercially negotiated agreements, regulatory intervention is generally necessary to assure just and reasonable switched access rates. Until the industry can transition fully to a regime of commercially negotiated agreements, the Commission needs to assure that intrastate switched access rates are set and maintained at a level that will promote competition and economic efficiency.

---

[39] *Id.* at 1-2.

[40] *Id.* at 1, 3.

[41] *See* Sub. S.B. 162, Sec. 4927.02(A) ("It is the policy of this state to: … [r]ely primarily on market forces, where they exist, to maintain just and reasonable service levels for telecommunications services at reasonable rates …."); *CALLS Order* at ¶ 178.

This Commission required some ILECs to mirror intrastate and interstate switched access rates several years ago. Thus, staff's proposal to use interstate switched access rates as a benchmark in moving toward just and reasonable intrastate switched access rates is consistent with the Commission's "long established policy of mirroring interstate access rates."[42] In that sense, staff's recommendation to cap the intrastate switched access rates of all Ohio ILECs at interstate levels does not represent new policy; it merely would extend existing Commission policy to all ILECs, placing them on equal footing. Moreover, this proposal also is consistent with the National Broadband Plan's recommendation for reducing intrastate switched access rates to interstate levels within two to four years.[43]

B. Ohio ILECs Should Recoup Access Charge Reductions From Their Own End Users Rather Than From The Proposed ARF (Or Any Similar Fund).

Under staff's ARF proposal, for every dollar of revenue Ohio ILECs lose as a result of the proposed access rate reductions, they would receive a dollar from the ARF, paid for by contributions from ILECs, CLECs, providers of telephone toll service, wireless carriers, and carriers providing telecommunications services to providers of interconnected VoIP services. But, whereas the need for and benefits of the proposed access charge reductions are well-established, the same cannot be said of the proposed ARF.

As an initial matter, Sub. S.B. 162 does ***not*** require the establishment of the ARF. Although staff suggests that the proposed ARF would satisfy Sub. S.B. 162 and allow access

---

[42] *Ohio PUC Comments* at 42-43. *See also In the Matter of the Commission's Investigation of Intrastate Access Charges*, Case No. 83-464-TP-COI, Opinion and Order at 36 (Mar. 12, 1987) (requiring all Ohio ILECs to cap intrastate rates at interstate levels); *In the Matter of the Complaint of AT&T Communications of Ohio, Inc. v. Ameritech Ohio,*, Case No. 96-336-TP-CSS, Opinion and Order at 18-21 (Sept. 18, 1997) (requiring Ameritech to reduce its intrastate switched access rates by mirroring its interstate rates).

[43] *See* Federal Communications Commission, "Connecting America: The National Broadband Plan," http://www.broadband.gov/download-plan (March 16, 2010) ("NBP").

charge reductions to be on a "revenue-neutral basis,"[44] the bill is not so express and certainly does not define and set parameters for revenue neutrality or specify the mechanism by which revenue neutrality could be achieved, much less require the establishment of any sort of fund. Rather, Section 4927.15(B) of the Revised Code provides that the "reduction shall be on a revenue-neutral basis ***under terms and conditions established by the public utilities commission*** ...." (Emphasis added.) While Sub. S.B. 162 provides that the Commission "has authority ... to create and administer mechanisms for carrier access reform, including, but not limited to, high cost support,"[45] the statute does not compel the Commission to create a high cost support fund or any other form of fund. As a matter of public policy and sound economic principles, the Commission should look to other methods, rather than establish any form of fund that requires competitive providers (and their customers) to subsidize the ILECs with which those providers must compete. The obvious alternative is for the Commission to allow affected ILECs to rebalance their retail rates to recover lost access revenues.

As detailed above, one of the fundamental problems associated with excessive switched access rates is that they allow LECs to rely on recovering their costs from other carriers (access payors), rather than competing in the open market for revenues from their end-user customers. As the FCC has held:

> Such cost shifting is inconsistent with the competitive market that we seek to encourage for access service. Rather, it may promote economically inefficient entry into the local markets and may distort the long distance market. While we seek to promote competition among local-service providers, we also seek to eliminate from our rules opportunities for arbitrage and incentives for inefficient market entry.[46]

---

[44] Entry, Appendix A at 1; *see also* Section 4927.15(B), Revised Code.

[45] Section 4927(C), Revised Code.

[46] *CLEC Rate Cap Order* at ¶ 33

Indeed, the FCC repeatedly has observed that economically efficient competition and the consumer benefits it yields cannot be fully achieved as long as local exchange carriers seek to recover a disproportionate share of their costs from other carriers (*i.e.*, access payors), rather than from their own end users.[47] However, that is precisely what the proposed ARF would allow.

By replacing lost access revenue on a dollar-for-dollar basis, the ARF would take the implicit subsidy reflected in excessive access charges and make it explicit through ARF payments. But, either way, the subsidy would be paid by other providers that compete with these ILECs – and, ultimately and inevitably, by the customers of these providers. Merely shifting the revenue burden from one carrier-funded source (access rates) to another (the ARF) does not solve the fundamental problems associated with ILECs collecting too great a portion of their operating revenues from other carriers. Simply stated, the proposed ARF would do nothing to cure the underlying problem and would leave the competitive playing field just as uneven as it is now. This does not represent meaningful access charge reform.

The more economically efficient approach – and the approach that will best serve the access reform goals articulated by both the FCC and this Commission – is to allow Ohio ILECs to recoup lost revenues resulting from access charge reductions by rebalancing their retail rates. If necessary, Verizon also supports further relaxing or eliminating legacy regulatory requirements that undermine the ILECs' ability to operate efficiently.

The FCC specifically has recognized that retail rate rebalancing is the appropriate way to proceed:

> When a [local exchange carrier] attempts to recover additional amounts from its own end user, that customer receives correct price signals and can decide whether he should find an alternative provider for access (and likely local exchange) service. This

---

[47] *See generally id.*; *CALLS Order*, *supra*; *MAG Order*, *supra.*

> approach brings market discipline and accurate price signals to bear on the end user's choice of access providers.[48]

This is precisely how the National Broadband Plan proposes that state commissions handle access charge reductions on a going-forward basis. As noted above, the NBP proposes certain intercarrier compensation reforms, including reducing carriers' intrastate switched access rates to their corresponding interstate rate levels. But, with respect to providing carriers the opportunity to recoup any unrecovered legitimate costs, the NBP explicitly provides that "[t]he FCC should also encourage states to complete rate rebalancing of local rates to offset the impact of lost access revenues."[49] That is exactly what Verizon proposes here. And, in fact, this approach is one of the options contemplated by the legislature in Sub. S.B. 162.

Ohio law has recognized ILECs' ability to rebalance the retail rates they charge their own end users for local exchange services, now subject to certain restrictions contained in Section 4927.12 of the Revised Code. In authorizing the Commission to order changes in an ILEC's intrastate access rates, Sub. S.B. 162 expressly refers to those rights, providing that "any resulting rate changes necessary to comply with division (B) or (C) of this section shall be in addition to any upward [retail] rate alteration[s] made under section 4927.12 of the Revised Code."[50] Read together, this language clearly contemplates that the Commission may elect to further increase an ILEC's retail rates – above and beyond any increase the ILEC would have been permitted to undertake on its own under Section 4927.12 – as a means of allowing recovery for revenue lost due to the access rate reductions.

---

[48] *CLEC Rate Cap Order* at ¶ 39; *see also Access Charge Reform Order* at ¶ 68.

[49] NBP at 148 (Recommendation 8.7).

[50] Sec. 4927.15(B), Revised Code.

As the FCC has recognized, rebalancing rates is the better approach, as it promotes market discipline and economic efficiency.[51] That is how the National Broadband Plan recommends state commissions conduct access reform.[52] Indeed, because adopting staff's ARF proposal would run counter to the recommendations contained in the NBP, there is a significant risk that the Commission would have to make significant changes to – or entirely scrap – the ARF mechanism once the FCC acts.

Notwithstanding this backdrop, the staff plan overlooks rate rebalancing as a means to achieve the objectives of Sub. S.B. 162. Instead, the staff plan focuses on preserving the existing subsidies based on the mistaken belief that this is the only way to achieve its stated objective of "maintain[ing] the affordability of local service rates for end-user customers."[53] In ignoring rebalancing as an option, staff apparently assumes: (a) that the current local service rates of the ILECs in question are not artificially low (an assumption explicitly disputed by the NBP[54]); (b) that rates any higher than the current ILEC rates are *ipso facto* unaffordable; (c) that only a wireline ILEC can ensure universal service; and (d) that affordable equivalent service is unavailable from alternate providers. Verizon agrees that ensuring the universal availability of some form of basic telephone service at an affordable price is important. However, as demonstrated above, the marketplace has ensured such availability and other service providers stand ready to provide service in the ILECs' areas at affordable rates. Accordingly, there is no need, as staff proposes, to subsidize Ohio ILECs indiscriminately or to ensure that their retail rates forever remain at current levels – particularly when those rates may well be artificially low

---

[51] *See CLEC Rate Cap Order* at ¶ 39.

[52] NBP at 148 (Recommendation 8.7).

[53] Entry, Appendix A at 1.

[54] *See* NBP at 148.

already. Indeed, customers already can – and increasingly do – obtain affordable service from other providers throughout the state, notwithstanding that those providers operate without the benefit of state-sanctioned subsidies.[55]

Viewed from this perspective, the ARF actually would be counterproductive. Although staff's objective is to "maintain the affordability of local service rates for end-user customers,"[56] the proposed ARF only would serve to maintain ***ILECs'*** local service rates at current levels. But by requiring other providers to contribute to the fund – including wireless providers that currently pay little to no intrastate access charges – the proposed ARF mechanism would impose an additional cost on those providers that would create pressure on them ***to increase the rates*** they charge end-user customers. In fact, the costs associated with mandatory fund contributions can deter the entry of new providers and hobble existing competitors. This would hinder, not promote, staff's objective of "encouraging greater competition."[57]

By contrast, access charge reductions coupled with rate rebalancing would serve both of staff's stated objectives – *i.e.*, encouraging competition and maintaining universal service. The purpose of universal service programs is to ensure access to quality service at affordable rates – not to skew the market artificially by subsidizing legacy services that consumers increasingly do not want.[58] There is no better evidence that a government subsidy, whether state or federal, is

---

[55] *See* OTA Report at 6 ("Traditional home telephone service is in decline, rapidly being replaced by wireless, VoIP and Internet communications."); 2 (reporting that, between 2001 and 2008, Ohio ILECs lost 43% of their access lines to competition and alternative technologies); 9 (indicating that wireless communications now make up "the biggest sector of the telecom market in Ohio," with 11 different wireless providers serving 9.1 million cell phone users and approximately 15% of homes relying exclusively on wireless communications by year-end 2008); and 12 (noting increasing number of VoIP and "cable telephone" customers).

[56] Entry, Appendix A at 1.

[57] *Id.*

[58] *See* 47 U.S.C. § 254(b)(3).

unnecessary than the presence of a competitor willing to serve the same customers without such support.

At bottom, nothing in the statute requires the Commission to establish an explicit funding mechanism of the type proposed by staff. Any Ohio ILECs that lose revenue as a result of the proposed access reductions can and should look to recoup that revenue from their own end-user customers, rather than through any carrier-funded source that would undermine fair and efficient competition. The Commission, therefore, should reject staff proposal's to create the ARF.

Following the access rate reductions and the corresponding retail rate rebalancing, only if an Ohio ILEC can conclusively demonstrate that no other provider is able to offer service at affordable rates to consumers in its service area should the Commission consider other mechanisms to be necessary to assure universal service. But, even then, the Commission should look to alternatives other than establishing a fund that would perpetuate the very problems the restructuring of access rates is intended to address. For example, to the extent ILECs face financial problems as a result of legacy regulatory obligations, those obligations can be eliminated as responsibility for serving customers passes to the competitive market.

C. The Commission Should Reject the Proposed ARF, But – If A Fund Of This Type Is Established – The Commission Should Make Certain Changes To The Staff-Proposed Plan.

The Commission should reject staff's proposed ARF. However, if the Commission does establish such a fund, the Commission must alter the staff's proposal to ensure that the fund operates in the public interest. In particular, the Commission (1) should not require direct or indirect contributions from wireless carriers or VoIP providers, and (2) should allow those contributing companies whose rates are subject to Commission jurisdiction to recover the amount of the mandated contributions through end-user surcharges.

1. Wireless Carriers and VoIP Providers Should Not Be Required to Contribute to Any Fund.

Staff recommends that its proposed ARF be financed "by a mandatory monthly contribution from all contributing carriers."[59] A "contributing carrier" is defined as "an entity required to pay into the restructuring fund" and includes all providers regulated by the Commission, including "all incumbent local exchange carriers (ILECs) …, all competitive local exchange carriers (CLECs) …, and all providers of telephone toll service …."[60] But "contributing carrier" is also defined to include "wireless service providers."[61]

Thus, under the staff-proposed plan, wireless carriers are treated the same as regulated ILECs, CLECs and toll providers, and would be required to subsidize ILECs directly through payments to the ARF. However, as mentioned earlier, wireless carriers utilize little to no intrastate access service. The intrastate traffic that they exchange with ILECs is predominantly intra-Metropolitan Trading Area ("MTA") traffic and, thus, is not subject to access rates. Clearly, it would be improper and unfair to impose an ARF funding requirement on wireless carriers, when ILECs cannot impose access charges on wireless carriers in the first place.

In the same vein, although the staff's proposal recognizes that VoIP providers are not subject to state regulation,[62] staff nevertheless recommends that "[a] contributing carrier providing telecommunications services to a provider of interconnected voice over internet protocol services shall pay a mandatory monthly contribution related to its intrastate revenues

---

[59] Entry, Appendix A at 3 ("Plan Framework" item 8).

[60] *Id.* at 1 (Definition (b)).

[61] *Id.*

[62] *See* Entry, Appendix A at 3 ("Plan Framework" item 9). *See also* Sub. S.B. 162, Sec. 4927.03(A) (providing that, subject to limited exceptions, "the commission has no authority over any interconnected voice over internet protocol-enabled service …").

from providing such services."[63] It is not entirely clear what staff intends with this language and, therefore, Verizon reserves comment on this aspect of the proposal until it is further clarified. However, Verizon generally objects to any direct or indirect fund contribution by VoIP or wireless providers.

If a fund is established (and, again, it should not be), only regulated service providers may be required to contribute to the fund. Wireless carriers and VoIP providers (whether facilities-based or application-based) should be exempt from any direct or indirect contribution obligation. Even if there were no jurisdictional or other legal barriers to the Commission exercising authority to assess wireless and VoIP providers in this manner, which there are, the Commission should decline to take such action as a matter of public policy.

Public policy dictates that the Commission should not require providers of new, innovative services — including wireless and VoIP — to finance the business models of other telephone companies. That is particularly the case where there has been no demonstration that basic service would otherwise be unaffordable, that alternatives to traditional wireline service do not exist, or that wireline carriers could not provide the service without the support of such a fund. The Commission should not burden new services and technologies (and the customers that use them) based on legacy regulatory concepts and obligations that have outlived their usefulness. Indeed, these service and technology innovations are spurring competition in the telecommunications marketplace, thereby providing an impetus for reduced rates in the traditional wireline sector. Burdening such services and customers with unnecessary new ARF fees will tend to drive investment dollars away from Ohio. If the Commission forces wireless carriers or VoIP providers to contribute to the proposed ARF, the result will simply be higher

[63] Entry, Appendix A at 3 ("Plan Framework" item 8).

rates, a chilling effect on innovation, reduced investment, and fewer competitive options and benefits for Ohio consumers.

2. If the Commission Establishes a Fund, Contributing Carriers Should Be Entitled to Recover the Amount of their Contributions Through End-User Surcharges.

If the Commission establishes a fund (and, again, it should not), the Commission must recognize that carriers required to contribute to the fund will be forced to recover those costs from their own customers. Those providers will recover (in the case of wireless and VoIP providers, whose rates the Commission may not regulate) and should be permitted to recover (in the case of other carriers) their contributions through end-user surcharges. Obviously, surcharges could adversely affect a contributing carrier's competitive position by making its own services more expensive. However, contributing providers should at least have the discretion to decide for themselves whether such a mechanism could mitigate the contribution burden.

III. RESPONSE TO QUESTIONS POSED IN APPENDIX B.

In accordance with the Commission's November 3, 2010 Entry, Verizon hereby provides its responses to the specific questions regarding staff's proposed plan contained in Appendix B.

1. The Staff's proposed plan for the restructuring of ILEC access rates addresses the impact of access rate reduction only and does not address the impact of access line loss on the rural ILECs' provider-of-last resort 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?

Verizon's Response: Verizon understands the Commission to be raising two issues with this question: (a) whether the proposed ARF (or similar such fund), if established, periodically should be reviewed and recalibrated to account for access line and access minute of use ("MOU") losses; and (b) whether the fund should provide additional recovery to ILECs to make up for such access line losses and fulfill any provider-of-last resort obligations they may have.

As an initial matter, for the reasons set forth above, the Commission should not establish the proposed ARF (or any similar fund). Ohio ILECs should look to replace any lost access revenues resulting from the proposed rate reductions from their own end users through rebalancing of other rates.

If a fund is established, however, it should be recalibrated periodically to account for access line and access minute losses. Current access lines and minutes should be used as the basis for calculating only current recovery from any fund. Future recovery should not be based on now-current access line and minute totals. No carrier should continue to receive subsidies for a line it no longer serves.

Because of competition from wireless and VoIP providers and other factors, ILEC access lines and minutes of use ("MOUs") generally are declining. In other words, ILECs' total access revenues can be expected to decline not just because of the proposed access rate reductions, but also because of market-driven access line and MOU losses. Accordingly, any fund mechanism that attempts to calculate (and replace) the revenue losses associated solely with a decrease in access rates should account for and segregate out the revenue losses resulting from other factors – namely, access line and MOU losses. Otherwise, too great a portion of the losses would be treated as if they were attributable to the proposed rate changes and ILECs would recover more than they should from the proposed fund.

There is no justification for or advantage to locking in outdated line and minute totals as the basis for recovery from the proposed fund. That simply would create a windfall for ILECs, allowing them to not only recover all of the revenue losses resulting from the proposed rate reductions, but also insulating them from competitive market forces that have caused their line and MOU totals to decrease. That would not be consistent with the legislature's directives to "[r]ely primarily on market forces" and to "[n]ot unduly favor or advantage any provider."[64] Thus, if a fund is established, the level of the fund should decline as access minutes decline.

To the extent there is any concern that competition-driven access line losses potentially might jeopardize some ILECs' ability to fulfill any provider-of-last resort obligations they might have, the proposed fund should not be used as a mechanism to further prop up those ILECs. Such a measure would only exacerbate the problems associated with ILECs receiving too great a portion of their revenues from other providers, rather than from their own end users. In addition, Verizon supports elimination of legacy regulatory burdens (like provider-of-last-resort obligations) that make no sense in a competitive market and unnecessarily increase ILECs' costs in a market where universal service is being achieved through other technologies (*i.e.*, wireless, VoIP, etc.).

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 ILECs' networks increases, is this a reasonable approach to obtain support from all beneficiaries of the eligible ILECs' networks?

Verizon's Response: For the reasons set forth above, the Commission should not establish any restructuring fund. Ohio ILECs should look to replace any lost access revenues resulting from the proposed rate reductions from their own end users through rebalancing of other rates.

If, however, such a fund is established, it is unclear what staff intends with the proposed language regarding contributions from carriers providing services to VoIP providers based on intrastate revenues from providing such services. Verizon therefore reserves comment on this

---

64 Section 4927.02(A)(3)(9), Revised Code.

aspect of staff's proposal until it can be further clarified. However, as discussed in Section II.C.2 above, in general, only regulated service providers should be required to contribute to the fund; VoIP and wireless providers should not be compelled to contribute either directly or indirectly.

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?

Verizon's Response: For the reasons set forth above, the Commission should not establish any restructuring fund. Ohio ILECs should look to replace any lost access revenues resulting from the proposed rate reductions from their own end users through rebalancing of other rates.

However, any fund that is created should be subject to Commission review after a period of no more than two years (for both price-cap and nonprice-cap eligible ILECs), and the Commission's initial order establishing any such fund should make it clear that no ILEC should assume or rely upon the continued existence of the fund beyond that point. An explicit sunset review mechanism will minimize service-provider reliance on the fund, and will create an incentive for structural changes that will enable a provider to address any access revenue decreases through other, more competitively efficient means.

Moreover, technology, market structure, and regulation in the communications industry have changed rapidly in the last several years, and every indication is that such changes will accelerate in the future. As noted above, one important factor in this regard is the National Broadband Plan, which will undoubtedly have a profound effect on the need for and appropriateness of state funding mechanisms like that proposed by staff. A reasonably short sunset period will help ensure that appropriate changes are made in the fund to reflect these external changes.

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?

Verizon's Response: For the reasons set forth above, the Commission should not establish any restructuring mechanism to replace lost access revenues resulting from the proposed rate reductions. However, in general, any such mechanism should utilize the same approach and same methodologies for both price-cap and nonprice-cap eligible ILECs, allowing both classes of ILECs the pricing flexibility needed to rebalance their retail rates. Verizon reserves comment on whether there may be any instance in which the restructuring mechanism should treat the different classes of ILECs differently until it has had the opportunity to review the specifics of such proposals.

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?

Verizon's Response: For the reasons set forth above, the Commission should not establish an access restructuring fund. Verizon takes no position with respect to the third-party administrator issues at this time, but reserves the right to respond to the comments of other participants on this subject in its reply comments.

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?

Verizon's Response: For the reasons set forth above, the Commission should not establish any fund. Verizon takes no position with respect to the administrative cost issues raised in these questions at this time, but reserves the right to respond to the comments of other participants on this subject in its reply comments.

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

Verizon's Response: For the reasons set forth above, the Commission should not establish any access restructuring fund. Ohio ILECs should look to replace any lost access revenues resulting from the proposed rate reductions from their own end users through rebalancing of other rates.

However, if an access restructuring mechanism is created, the Commission should follow staff's recommendation to revisit the mechanism upon any related action by the FCC and take measures consistent with the FCC's rulings. Indeed, as discussed above, the possibility of that the proposed fund would be inconsistent with FCC policy and action on this very issue is one reason why the Commission should not establish any fund in the first place.

As part of the proposed National Broadband Plan, FCC staff proposes certain intercarrier compensation reforms, including reducing carriers' intrastate switched access rates to their corresponding interstate rate levels. But, contrary to staff's proposal here, the National Broadband Plan explicitly provides that "[t]he FCC should also encourage states to complete rate rebalancing of local rates to offset the impact of lost access revenues,"[65] rather than establish new state funding mechanisms. Because adopting staff's proposal would run counter to the recommendations contained in the National Broadband Plan, there is a significant risk that – if the Commission were to create a funding mechanism here – it would have to significantly alter or abandon that mechanism once the FCC acts.

[65] NBP at 148 (Recommendation 8.7).

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?

Verizon's Response: For the reasons set forth above, the Commission should reject staff's proposal to establish an access restructuring fund. Verizon takes no position with respect to the contingencies raised in this question at this time, but reserves the right to respond to the comments of other participants on this subject in its reply comments.

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?

Verizon's Response: For the reasons set forth above, the Commission should not establish any access restructuring fund. Ohio ILECs should look to replace any lost access revenues resulting from the proposed rate reductions from their own end users, rather than from a fund to which other providers are compelled to contribute.

However, if a fund is created, only regulated service providers should be required to contribute to the fund. For the reasons discussed above, VoIP and wireless providers should not be compelled to contribute, either directly or indirectly, to any fund and the Commission should include a finding to that effect in any order establishing a fund.

Otherwise, if a carrier believes that it is not a contributing carrier, it should inform the Commission of that belief in writing within 30 days of the effective date of the Commission order establishing any fund (or, thereafter, promptly upon discovering the facts and information that give rise to that belief).

IV. CONCLUSION.

For the reasons set forth above, Verizon supports staff's proposal to continue with the access reform the Commission started a decade ago. However, Verizon objects to staff's recommendation that the Commission establish an Access Restructuring Fund to replace any revenue losses resulting from the contemplated access rate reductions. Affected Ohio ILECs instead should recoup any lost access revenues from their own end users through rebalancing of their retail rates. Only if that proves unworkable should the Commission consider any other avenues (and, even then, it should look to other alternatives rather than accept the proposed fund). If a fund nevertheless is established, the Commission should limit contributions to regulated carriers – wireless carriers and VoIP providers should not have to contribute to the fund – and the Commission should take other measures to ensure that contributing providers are still able to compete effectively while subsidizing the Ohio ILECs with which many of them compete.

Respectfully submitted on December 20, 2010.

Barth E. Royer (Counsel of Record)
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
Phone: (614) 228-0704
Fax: (614) 228-0201
Email: barthroyer@aol.com

David Haga
Assistant General Counsel
Verizon
1320 North Courthouse Road
Arlington, Virginia 22201
Phone: (703) 351-3065
Fax: (703) 351-3655
Email: david.haga@verizon.com

Attorneys for MCImetro Access Transmission Services 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 services in the state of Ohio, collectively d/b/a Verizon Wireless

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by first class US mail, postage prepaid, and by electronic mail this 20th day of December 2010.

Barth E. Royer

Janine L. Migden-Ostrander
David C. Bergmann
Terry L. Etter
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215
bergmann@occ.state.oh.us
etter@occ.state.oh.us

William Wright
Assistant Attorney General
Chief, Public Utilities Section
180 E. Broad Street, 6th Floor
Columbus, OH 43215
bill.wright@puc.state.oh.us

Douglas E. Hart
441 Vine Street, Suite 4192
Cincinnati, OH 45202
dhart@douglashart.com

Joseph R. Stewart
CenturyLink
50 West Broad Street, Suite 3600
Columbus, OH 43215
joseph.r.stewart@centurylink.com

William A. Adams, Esquire
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, OH 43215-3422
william.adams@baileycavalieri.com

Mary Ryan Fenlon
Jon F. Kelly
AT&T Services, Inc.
150 East Gay Street, Rm. 4-C
Columbus, Ohio 43215

Norman J. Kennard
Regina L. Matz
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, Pennsylvania 17108-9500
rmatz@thomaslonglaw.com