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January 19, 2011

***Via Electronic Filing***

Renee Jenkins, Secretary of the Commission
Attn: Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

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

Dear Secretary Jenkins:

Enclosed for electronic filing in the above-captioned docket please find the Reply Comments of the Small Local Exchange Carriers Group.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

THOMAS, LONG, NIESEN & KENNARD

By
Norman J. Kennard

NJK:tlt
Attachment
cc: Per Certificate of Service

**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY COMMENTS OF THE**
**SMALL LOCAL EXCHANGE CARRIERS GROUP**

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## I. INTRODUCTION

The Small Local Exchange Carriers Group ("SLEC Group" or "SLECs") thanks the Ohio Public Utilities Commission ("Commission" or "PUCO") and its Staff for the well-considered and proactive approach to access reform proposed in the Entry dated November 3, 2010, in at the above-captioned docket ("Entry"). The SLECs file these Reply Comments according to the schedule established by the Commission.

## II. THE OHIO SLECS

Certainly, as compared to those carriers opposing creation of the ARF, the SLECs are very small.[1] The impact the ARF will have on those large carriers is correspondingly small, comprising a slight fraction of their overall revenues, while, because of their relative size and the rural nature of their territories, the Fund is critical to the SLECs and their Ohio rural consumer, if intrastate access reductions are to be mandated.

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[1] See discussion of the SLECs in their Comments at 2-5.

Using the information provided by the OCC in their Appendix D, the number of residential customers served by the SLECs is *de minimis* compared to the overall Ohio telecommunications market. Vaughnsville Telephone Company, for example, has only 237 residential customers. Over half the SLECs serve fewer than 1,000 residential customers. Chillicothe Telephone, the SLECs at the "high" end of the residential customer range, serves slightly less than 18,000 residential customers.

Moreover, the geographic areas these companies serve, for the most part, comprise only very small cities, hamlets, and villages scattered throughout rural Ohio. Most are one exchange carriers like Vaughnsville, which serves an unincorporated territory the major development of which centers around the intersection of state highways 115 and 12. Telephone Service Company serves Wapakoneta, a city of under 10,000 inhabitants in Auglaize County. This is geographically near the city of New Knoxville, which has a population of less than 1,000, and is the only city in the service area of the New Knoxville Telephone Company.

The SLECs serve none of Ohio's high density, low cost cities such as Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, or Youngstown. These are served exclusively by AT&T and Cincinnati Bell. Rather, the SLECs serve the least populated small towns and unincorporated areas with populations well below 50,000, in the most rural, unincorporated territories of Ohio.

Verizon, a vocal opponent of the ARF, has failed Ohio's most rural areas and is focused upon becoming more urban, and more dense, shedding rural lines by the millions across the country. In May 2009 Verizon announced its sale of 4.8 million rural phone lines, including its Ohio customers, to Frontier Communications. As was reported then in the trade press, "Verizon has shed millions of rural phone customers in recent years to focus on its wireless business and populous markets that are better tailored to its FiOS TV and Internet services[.]"[2] For companies interested in serving profitable, populous areas, rural markets do not fit their business plan. As Verizon's Chief Financial Officer John Killian acknowledged at the time:

> These are good properties, but *they're much more rural in nature, and they really don't fit with the strategy we have for FiOS and broadband*[.][3]

Verizon has "shift[ed its] center of gravity toward the growing wireless and broadband markets[,]" spinning off rural wireline properties expanding its "industry-leading fiber-optic network, FiOS" into "big city markets like New York City, Philadelphia and Washington, D.C."[4] Verizon Wireless "is the industry–leading wireless service provider in the U.S., in terms of profitability" and "the largest wireless service provider in the U.S. in terms of the total number of customers."[5] Verizon's business model no longer excludes just rural customers, but also maintenance of a wireline network in general.

To Verizon, the traditional telephone network and rural customers have little or no remaining value and the company has moved on.

Investment is no longer aimed at traditional wireline residential customers in its rural areas or in any other areas. Verizon has concentrated its growth and investment on "devoting [its] resources to higher growth markets such as the wireless voice and data markets, the broadband and video markets, and the provision of strategic services to business markets, rather than to the traditional wireline voice market [anticipating] that these efforts will help counter the

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[2] *Wall Street Journal*, May 14, 2009, "Verizon Sells Phone Lines In 14 States To Frontier," Amol Sharma, page B1.
[3] *Id.*(emphasis added).
[4] Verizon Communications Inc. 2008 Annual Report ("Verizon 2008 Annual Report") at 1.
[5] Verizon Communications Inc. SEC Form 10-K, February 24, 2009, at 4 ("Verizon 2009 10-K").

effects of competition and technology substitution that have resulted in access line losses, and will enable [the company] to continue to grow consolidated revenues."[6]

Verizon is also dismissive of the customers whose lines FiOS will not reach. As CEO Ivan Seidenberg explained at a September 2009 Goldman Sachs conference:

> You overdose on this question like it's the biggest issue," he said. Those lines will be served by a combination of data and satellite, he said. FiOS homes "will creep up over time," he said. "That last 20%, don't worry about it. Those customers will get served.[7]

The IXCs claim that reductions in access rates will improve the "competitiveness" of the long distance market. The toll market is declining for a variety of reasons, but none of these relate to access charge levels. The IXCs have been in the process of abandoning the IXC market due to factors much more powerful than access, including primarily changing technology and customer preferences.

In the Polumbo Declaration[8] filed before the FCC to support the *SBC/AT&T Merger Application*, AT&T explained its June 2004 decision to abandon the local and long distance mass market, setting forth a litany of reasons why its long distance business plan was failing: the existence of "powerful competitors," wireless package plans, the "RBOCs [win of] authority to offer interLATA services throughout the country[,] competing aggressively and winning market share very quickly[,] E-mail and instant messaging," for example, all contributed to the decline and abandonment of AT&T's long distance business plan.[9] Access rates are no where listed as a cause for the abandonment of the long distance market.

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[6] Verizon 2008 Annual Report at 14; It experienced growth in "all [its] strategic [i.e., non-traditional] businesses in 2008: 12.4 percent in wireless, 42 percent in broadband and video, and 16 percent in strategic business services." Verizon Communications Inc. SEC 2008 Form 10-K ("Verizon 2008 10-K") at 4.

[7] http://www.onetrak.com/ShowArticle.aspx?ID=4196, "*FiOS Changing Verizon Cost Structures*," Matt Stump.

[8] *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, WC Docket No. 05-65 ("*SBC/AT&T Merger Application*"), Declaration of John Polumbo, President and CEO of AT&T Consumer Services ("AT&T Polumbo Declaration"); Available at http://fjallfoss.fcc.gov/ecfs/document/view?id=6517309101.

[9] *Id.* at ¶ 4.

AT&T decided that it would no longer serve stand-alone toll customers, but instead would market bundles that matched what its unregulated or lightly regulated competitors were doing.[10] AT&T intended that stand alone toll customers "dwindle[] away over time through churn."[11] AT&T, in fact, during this time of decreasing interstate access rates raised its customers toll rates for its all-distance bundles by anywhere from $2 to $5, and increased the monthly recurring charge on many plans typically by either $1 or $2, as well as increased a number of basic rates for international service.[12] Thus, claims of historic benefits and promises of future Ohio customer benefits are illusory.

Outside the forum of this case, AT&T does not blame high intrastate access charges for its wireline toll losses and the change in its business plan to broadband and wireless. As AT&T has elsewhere repeatedly emphasized, it is intermodal competition that affects its business.[13] Thus, AT&T decided, some time ago, to grow its revenues in precisely that direction -- wireless and broadband. AT&T has decided to grow its revenues in its other businesses, and put little to no more investment into the wireline segment, because of a shift in technology, not because of the level of rural intrastate access charges.[14] As AT&T stated: "Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete."[15]

Sprint Nextel is a vociferous opponent of an explicit rural support mechanism in Ohio. Yet, like Verizon and AT&T, Sprint Nextel's focus today is solely on its wireless segment

[10] *Id.* at ¶ 6.
[11] *Id.* at ¶ 9.
[12] *Id.* at ¶¶ 2 and 33-34.
[13] *In the Matter of International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act, A National Broadband Plan for Our Future, Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, GN Docket Nos. 09-47, 09-51, and 09-137, Comments of AT&T Inc. on the Transition from the Legacy Circuit-Switched Network to Broadband, filed December 21, 2009 ("*AT&T FCC Network Comments*").
[14] *AT&T FCC Network Comments* at 40.
[15] *AT&T FCC Network Comments* at 40.

having spun out its wireline operations, now CenturyLink, several years ago. Of Sprint Nextel's gross property, plant and equipment as of December 31, 2008, only $4.3 billion out of a total of $48.5 billion was invested in the wireline business.[16] Sprint Nextel targets its provision of service to its wireless segment, other communications companies, and targeted business customers, not to rural residential wireline customers. Although Sprint Nextel "continue[s] to provide voice services to residential customers, [it] no longer actively market[s] those services."[17]

Similarly, T-Mobile, a wireless only provider, opposes explicit support for revenue neutral intrastate access reductions for the SLECs. T-Mobile International is one of the top three global wireless carriers and a subsidiary of Deutsche Telekom AG. Like Verizon and Sprint Nextel, T-Mobile is also a national carrier, describing its network as covering approximately 2/3 of the United States population, "with more than 200 million people now covered across the country."[18] Like AT&T, Verizon, and Sprint Nextel, however, T-Mobile also lacks ubiquitous coverage in rural areas. Its coverage in Ohio is primarily in and around the major cities of Cincinnati, Columbus, Toledo, and Cleveland, and along the corridors of interstates 70, 90, 75 and 71 that connect those cities.[19] T-Mobile USA reported 4th quarter 2009 total revenues of $5.41 billion, and OIBDA of $1.38 billion.[20]

In Ohio's SLECs continue to invest for rural wireline consumers, providing broadband and other modern services necessary for today's economic development. While the mega-carriers continue to abandon this critical industry segment, they also oppose explicit support mechanisms

[16] Sprint Nextel Corp S 2008 10-K ("Sprint 2008 10-K") at 25.
[17] *Id.* at 5.
[18] www.t-mobile.com/company/InvestorRelations.aspx. Financial Releases, T-Mobile USA Reports 4th Quarter and Fully Year 2009 Results ("T-Mobile 2009 Financial Results") at 1. Unless specifically noted otherwise, information is attained from T-Mobile's website, available at www.t-mobile.com.
[19] http://www.t-mobile.com/coverage/pcc.aspx.
[20] T-Mobile 2007 Financial Results at 1, 4.

to replace the revenues derived by rural carriers from intrastate access rates in accordance with their legally tariffed rates.

*Notably, Verizon, Sprint Nextel and the other wireless carriers are not adversaries of explicit universal service support funding when they are recipients.* In both 2006 and 2007, Verizon (and its acquired company ALLTEL Wireless) received, by far, the largest aggregate payments from federal universal service support. On a combined year end holding company structure basis, these two Verizon companies received a total of $627 million in 2001 and $623 million in 2007. In 2006, wireless providers alone received almost $1 billion or 17% of the approximately $4 billion Universal Service Funding. In 2007, that amount escalated to $1.2 billion or 19% of the federal fund, while the overall incumbent carrier portion sank both in dollar and percentage terms.[21] Growth in the provision of USF support to wireless carriers exploded so exponentially, increasing at a rates of 100% annually, that the FCC was compelled to eliminate its identical support rule and cap competitive ETC support.[22]

The SLECs are not denigrating these other carriers. They are simply pointing out that, these carriers selectively develop their markets to serve predominantly lower-cost urban areas with a higher business to residential customer ratio against which their higher rural costs, if any, can be leveraged down. The SLECs do not have, and never had, these economies of scale or any other internal support mechanism upon which to rely outside the implicit support for reasonable BLES rates that access rates may provide. They have no urban areas with major business customers.

[21] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf; Table 19.2.
[22] *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (NOPR Released January 29, 2008) ("While support to incumbent LECs has been flat, or has even declined since 2003, competitive ETC support (primarily wireless carriers), in the six year from 2001 to 2006, has grown from under $17 million, to $980 million – an annual growth rate of over 100%.").

Nonetheless, despite the overwhelmingly rural nature of their service territories and lower business-residential customer ratio, the SLECs have continued to serve all rural customers, modernize their networks, and provide outstanding service and 21st century products. They provide these modern services as the carriers of last resort in their rural territories, where competitors have the ability to choose to serve, or not, based upon the profitability, rather than a statutory obligation mandating the continue provision of basic local exchange service regardless of the level of profitability.

Rather than penalize the SLECs for successfully evolving in today's competitive market, as the proposals of the OCC, Cincinnati Bell, and T-Mobile would do, the Commission should provide the statutory access restructuring support obligated to the SLECs under Revised Senate Bill 162.

## II. REPLY COMMENTS

### A. Administration of the Fund

Most parties addressing the issue agree that the PUCO has the ability to issue a Request for Proposals (RFP) or Request for Qualifications for the purpose of contracting with a third party administrator to handle the administration of the ARF. The SLECs set forth in their initial comments criteria the PUCO should consider for a 3rd party administrator, such as selecting an administrator that is neutral, impartial and independent. AT&T set forth similar considerations.[23]

As the SLECs identified in their Comments, at least three existing third party administrators have varying degrees of experience in administering existing universal service or access restructuring funds across the country. GVNW Consulting, Inc. has provided fund administration services in Kansas and Illinois. Solix, Inc. provides third-party administration

[23] AT&T Comments at 7-8.

services to the states of Arizona, Connecticut, Indiana, New Mexico, Nevada, Oklahoma, Oregon, and Pennsylvania. The firm of Rolka Loube Saltzer Associates assists in the administration of funds in Arkansas, Vermont, and Maine.

Further information is available in a report dated January 19, 2010, by the National Regulatory Research Institute (NRRI). NRRI addressed the administration of state high cost funds, noting, as did the SLECs, that administration may be accomplished by internal state staff (through the regulatory commission or in concert with other state agencies), through an ILEC or industry coalition, or through a third party administrator.[24] NRRI identified costs of administration that ranged from a high of almost $3 million for the administration of California's very complex, high cost funds, to lows of $25,000-$30,000 for more straightforward funds in Maine and Idaho, with most funds averaging administration costs of approximately $100,000 to $300,000 dollars.

While the initial year's set-up of the Fund may require more effort, until procedures and forms are put into place, once the ARF is established, administration costs should generally account for no more than a fraction of the cost of the fund, particularly a fund as straight-forward as the Staff's proposed ARF. In Pennsylvania, for example, a similarly simple revenue replacement restructuring fund was established as the result of a 1999 Pennsylvania Public Utility Commission Order.[25] An annual administrator's report recently approved by the Pennsylvania Commission sized the Pennsylvania Fund at approximately $33.6 million for calendar year 2011, with additional contracted for third party administration costs of

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[24] NRRI's 2010 report may be accessed at http://www.nrri.org/pubs/telecommunications/NRRI_state_high_cost_funds_jan10-04.pdf

[25] *Nextlink Pennsylvania, Inc.*, 93 Pa P.U.C. 172 (September 30, 1999), 1999 Pa. PUC LEXIS 63,196 P.U.R. 4th 172, *aff'd sub nom. Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission,* 763 A.2d 440 (Pa. Cmwlth. 2000) *vacated in party sub nom. MCI Worldcom Inc. v. Pa. Public Utility Commission*, 844 A.2d 1239 (Pa. 2004)(State court lacked jurisdiction to review unbundled network elements decision).

approximately $131,000.[26] This information provides the PUCO some order of magnitude of the level of costs that would be associated with an independent third party administrator. In addition, the PUCO may wish to consider independent audits. In Pennsylvania, the costs of independent audits were a fraction of the cost of administration.[27]

## B. The Parity Objective and Revenue Neutrality

### 1. The Parity Objective

As stated in their Comments, the SLEC Group generally agrees with the objective of parity, *if* all other interrelated issues, such as revenue neutrality, are addressed at the same time. There is no overwhelmingly compelling reason to set intrastate rates specifically at unity with the interstate rate, but it is reasonable to do so, provided that the lost revenues are recovered via the ARF, as proposed in Appendix A consistent with the goal of universal service. Parity is simply a form of rate benchmarking, which has been set as the goal by numerous states in the last several years, with the objective of rendering the "cost support" provided by access customers to be "explicit."

If the Commission ultimately determines, as a matter of policy, that on a going-forward basis, it desires to reduce intrastate access rates to more closely approximate their interstate counterpart, the Commission may do so (and, like the FCC, should do so with explicit support funding). However, while the Commission may choose to pursue this policy, it clearly is under no legal mandate – statutory or regulatory – to do so.

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[26] *Pennsylvania Universal Service Fund Annual Rate Adjustment*, Docket No. M-00001337 (Order entered December 3, 2010) ("*PAPUC 2010 USF Order*"). The Pennsylvania Fund is currently administered by Solix. Initially upon its implementation, the PA Fund was administered by NECA, the National Exchange Carrier Association Inc.

[27] See *PAPUC 2010 USF Order a.* Based upon the 2010 auditor expense of $23,292, the PA PUC estimated a cost of $25,000 for external auditor fees for the year 2011. *Id.* at 5, footnote 5.

As the 10th Circuit agreed: "The [FCC] has repeatedly stated that the [TCA-96] does not mandate that states transition from implicit to explicit subsidies."[28] In reviewing the FCC's implementation of interstate access reform and the achievement of federal USF goals, the 10th Circuit Court of Appeals held that TCA-96 "did not dictate an arbitrary time line for transition" from implicit to explicit support nor did it "expressly foreclose the possibility of the continued existence of state implicit support mechanisms that function effectively to preserve and advance universal service."[29]

Higher intrastate access rates do not impede toll competition. There is no demonstration in the parties' comments, other than the rhetorical claims, that Ohio access rates harm competition. Nor have state access rates retarded the rate of technological innovation in Ohio.[30] The SLECs all maintain modern networks, which they are constantly improving. The *loss* of access revenues would arrest that innovation, not spur it.

The SLECs are sympathetic to the fact that the IXCs' toll business has declined, since the cause is directly proportional to the SLECs own loss of market share to intermodal competition. The cause of this decline, however, is not intrastate access rates.[31] It is a direct result of the increased number of competitors[32] and the attractiveness of their products, particularly to young adults. The growth in email and texting, as well as social web sites, has truly become a cultural

[28] *Qwest v. FCC,* 398 F.2d 1222, 1231 (10th Cir. 2005).
[29] *Id.*, 398 F.2d at 1233.
[30] AT&T Comments at 4 (citing a speech by FCC Chairman Genachowski referencing carriers resisting conversion to all-IP networks).
[31] AT&T claims that the erosion in its toll business attributable to "email, texting, wireless phone service, Voice over Internet Protocol ("VoIP") services, cable telephony, instant messaging, and social networking websites" is caused, "not because of any real difference in quality," but because they are "not burdened with access charge subsidies." AT&T Comments at 5.
[32] It is worth noting that these competitors do not allow IXC access to their customers. Neither cable nor wireless carriers offer customers the right to use an alternative toll provider. There is no option to choose a "Preferred Interexchange Carrier" ("PIC") as there is with the ILECs.

phenomenon and relates to convenience and ease of use. It also marks a fundamental transformation in the way we communicate.

These powerful changes in technology and customer preference are the reasons that the big IXCs' decided to exit the toll market several years ago, not access rates. The IXCs' business models have simply changed with technology and customer preferences. In published articles and sworn testimony to the FCC, the IXCs have affirmed this.[33] It is misleading for the IXCs to now suggest otherwise to this Commission.

The reduction in access revenues, therefore, will have little or no effect on further promotion of wireline toll competition, particularly in rural service territories. Complaints about the SLECs' access rates on grounds of competitive harm are simply a façade to rationalize the proposed transfer of millions of dollars, over multiple years, from rural local service providers and their customers to the largest long distance and wireless carriers in the country, while at the same time enhancing the competitive positioning of their wireless and cable operations by increasing the SLECs' end user rates.

Wireless service is growing because of mobility, convenience and the high tech functionalities of the phones. The iPhone is a phenomenon by any measure. Wireless phones no longer offer *just* voice service, or voice and camera services. They have "apps." Web browsing and data transmission over wireless phones are exponentially expanding wireless' viable options. Consumers, particularly the younger generations, are increasingly willing to use wireless exclusively for their communications needs.

VoIP phones are also gaining widespread favor. Reliability and privacy are less valued features. The overall maturation of technology and usability of IP technology has driven the growth of competitors' lines at the expense of traditional fixed lines. Again, intrastate access

[33] AT&T Polumbo Declaration at ¶¶ 1 and 9.

rates have nothing to do with the growth of this product. Many of the carriers delivering VoIP-based calls use the SLECs' exchange access services, but simply refuse to pay access charges and, therefore, magicJack can advertise unlimited calling for $19.95 per year.

While the IXCs complain that the FCC has approved a different compensation scheme for wireless carriers (i.e., the MTA as a local call), this is a federal policy decision. The designer of the rule, the FCC, inconsistently applies its access rates to the wireline carriers on the basis of tariffed local calling areas, and to wireless on the basis of the much larger MTA. Advised or not, compliance with the federal rule by the SLECs and this Commission is required. If that is how the FCC designed intercarrier compensation for wireless. It is not a reason to arbitrarily change intrastate access rate levels.

Access rates are also fair for CLEC compensation. MACC simply claims that, without support, "inflated" access rates have slowed local competition.[34] Just released public FCC industry figures reflect this assertion and demonstrate the daily migration of SLEC customers to the CLECs. At year end 2009, there were 1.6 million access lines served by CLECs in Ohio, or 29% of all LEC lines.[35] That is almost a doubling from the 15% penetration tallied in 2005.[36] Of that 1.6 million lines, 1 million are VoIP, indicating strong investment by cable companies (fixed VoIP) and pronounced use of LEC facilities to reach the customer (nomadic VoIP).[37]

Sprint Nextel actually claims that intrastate access charges are used by the SLECs, not as support for local rates, but as a war chest to enrich other ventures or to overcompensate

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[34] MACC Comments at 2 (Without explaining, MACC claims that "[t]he use of access charges as a default mechanism for universal service support has long posted a barrier to entry into the service territories of rural ILECs.").

[35] *Local Telephone Competition: Status as of December 31, 2009*, Industry Analysis and Technology Division, Wireline Competition Bureau, dated January 2011 at Table 8. The information is publically available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0111/DOC-304054A1.pdf.

[36] *Id.* at Table 11.

[37] *Id.* at Table 14.

themselves.[38] Of course, the entire historic pricing regimen of access and local rates was not to create overearnings, but to maintain affordable local rates.

Nor is there any discrimination among the SLECs' exchange access customers. If the call is intrastate, interexchange traffic, the IXCs *all* pay the same Commission-approved rate. The Commission has approved these tariffed rates and they are applied uniformly. The same applies to an interstate call, for which carriers all pay the FCC tariffed rate. The lack of intra/interstate parity is not discriminatory either. The FERC and this Commission set rates, in their respective jurisdictions, for similar natural gas and electric services. To the extent the discrimination claim relates back to wireless, the distinctions between wireline and wireless compensation are *federal* policy determinations and not the result of any action of this Commission or any SLEC.

Again, however, the SLECs state their support of parity, *if* acted upon responsibly and rationally, as is proposed in the ARP. If the PUCO does not act, then FCC likely will. We have the opportunity here to do what is beneficial for all Ohioans. The ARP should be implemented.

### 2. Design of the ARP/ARF

#### a. The ARF Is Not Burdensome

The ARF is about rendering the difference between state and intrastate access rates explicit, rather than continuing that difference implicitly within the intrastate access rate itself. There is, as the first step, a considerable rate reduction to the access customers, which the IXCs do not protest.

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[38] Sprint Nextel Comments at 2-3 ("In today's market a subsidized ILEC can use the subsidy to 1) create artificially low rates for its own retail services in order to undercut its competitors; 2) invest in nonregulated services like broadband and video in order to gain a competitive advantage over carriers that must invest in these capabilities with their own funds without the benefit of subsidies; and 3) enrich the shareholders and executives of the ILEC at the expense of their competitors and Ohio consumers. In contrast, competitors have fewer resources to invest in competitive innovations and experience low or negative margins if they attempt to match the ILECs' subsidized prices.").

The IXCs do, however, complain about the means used to fund the SLECs' revenue loss, ignoring the expense reductions that they will enjoy. For example, Cincinnati Bell "opposes any plan that shifts revenue recovery burdens onto other carriers and their customers."[39] In doing so, Cincinnati Bell both overestimates the impact of the ARF and underestimates the benefit of reduced access rates to it. Most fundamentally, the statement ignores the benefits of reduced access rates. The assertion ignores Cincinnati Bell's considerable positions as an IXC, CLEC and wireless carrier. It also fails to account for the ARF funding to be realized from other wireless and VoIP service providers. Once these variables are recognized, any net impact upon Cincinnati Bell will be modest and even positive.

The rhetoric becomes particularly aggressive where Cincinnati Bell characterizes the ARF as "creating a new government sponsored subsidy."[40] The flaw of this argument lies in the claim that the ARF is a "new express subsidy arbitrarily extracted from sources that have no relationship to the costs that are being subsidized."[41] As described next, other carriers who use the SLECs' access services, of course, do use the SLECs' local networks. Secondly, Cincinnati Bell misconstrues the purpose of the ARF. It is the difference between two rates externalized and collected from carriers by other means. Equal to the hyperbole, but suffering from the same analytic shortcomings, the cable association claims that the ARF is "a remarkable departure from standard economics and policy and represents nothing more than an inter-corporate (and, ultimately, inter-consumer) tax system that is unrelated to any finding of need or valid public purpose."[42] It is neither a government hand out nor a tax.

[39] Cincinnati Bell Comments at 2.
[40] *Id.* at 3.
[41] *Id.* at 4.
[42] OCTA Comments at 2-3.

### b. To Be Revenue Neutral, the Offsetting Revenues Must Be Jurisdictional to This Commission

While intended to be pejorative, the OCC's description of the ARF as "a make-whole mechanism to lost access revenues" is an accurate description of the statutory intent of the revenue neutrality provision and not at all a criticism.[43]

The SLEC Group's Comments discussed the statutory requirement of revenue neutrality,[44] which it defined as 'the *realistic* opportunity to increase revenues from sources that are regulated by this Commission, in a manner which will offset access reductions on a dollar-for-dollar revenue basis."[45] The opportunity to realize the substitute revenues must be realistic and attainable. The SLECs concluded that the design of the ARF satisfies statutory directive through explicit fund support.

Some commenters argue that revenue sources other than those regulated by the Commission should be increased. To impute existing revenues from deregulated and competitive services as replacement funds for access reductions would be an error. The SLECs' rates and revenues continue to be defined by the Commission as a regulated utility business and confiscation will occur, if the Commission simply takes that money without assuring revenue neutrality through services that are jurisdictional to the PUCO.

So, for example, the OCC is clearly in error to advocate that "non-BLES" revenues be increased to recover access rate decreases, while simultaneously acknowledging that the Commission lacks the jurisdiction to do so.[46] Sprint Nextel similarly over extends when it claims that the SLECs have "the ability to collect (and are collecting) revenues from numerous

[43] OCC Comments, Appendix A at 41.
[44] R.C. 4927.15(B).
[45] SLEC Comments at 9.
[46] OCC Comments at 33.

other services provisioned over the same network they use to provide local exchange service and exchange access," citing internet connections and video services.[47]

As to other services, the FCC has jurisdiction over DSL service. The revenues from a federal service cannot be used to compensate for intrastate revenue reductions. The FCC has ruled that existing interstate loop allocations capture all interstate uses of the loop, including DSL.[48] The FCC sided with BellSouth, finding that the cost of reclassifying broadband transmission from regulated accounts "would impose significant burdens that outweigh these potential benefits."[49] No further allocation is required or permitted for DSL service. The PUCO cannot countermand these federal directives regarding interstate services. Similarly, ISP and video services are not regulated by this Commission either.[50]

In evaluating the revenue neutrality standard, the regulatory body may consider only revenues from the services within its jurisdiction, as is the standard for constitutional confiscation.[51] This Commission's regulatory authority is limited to *intrastate regulated* services and confiscation is defined within that grouping.[52] The Supreme Court has held that only those rates that the regulator controls and can take credit for may be considered in determining whether the regulator has met its obligation to provide just compensation.[53] The Commission is not responsible for the revenues earned from competitive services and cannot influence the revenue or profits for those services. Similarly, the revenues from competitive services reflect the

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[47] Sprint Nextel Comments at 5 ("Consequently, the average retail revenue per customer an ILEC collects over its common network continues to expand. ILECs should therefore be expected to recover their costs through the provision of services to their own customers.)
[48] *Framework for Broadband Access to the Internet over Wireline*, CC Docket No. 02-33, Report and Order and Notice of Proposed Rulemaking released September 23, 2005 ("*FCC Wireline BB Order*").
[49] *Id.* at ¶ 134.
[50] *Id.* at ¶ 131 ("Incumbent LECs argue that they should not have to undertake this task because it would impose significant burdens on them with little discernible benefit. We agree").
[51] *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 148-49 (1930).
[52] *Id; see also Smyth v. Ames*, 169 U.S. 466, 541 (1898).
[53] *Brooks-Scanlon Co. v. Railroad Comm'n*, 251 U.S. 396 (1920).

compensation due to the firm for the risks of a competitive business and cannot be treated as "compensation" for lower regulated rates set by the regulator.[54]

Some commenters also argue that a "needs test" should be implemented and replacement revenues provided only after that. Cincinnati Bell would increase local rates under the mistaken cost theory described above and then provided funding where "some demonstration of need should be made" referring to the federal high cost fund.[55] The OCC makes a similar proposal for a high cost fund, but also does not offer any detail to explain it.[56] These proposals suffer for the same costing difficulties elsewhere described in these reply comments. As fatally, no where is the concept of revenue neutrality even recognized, let alone, addressed in these proposals.

### c. Cost Is Not the Appropriate Pricing Standard

Several of the commenters advocate parity as a matter of cost-based access rates. Cost-of-service rate setting is neither advisable nor required, however, and the objective is unattainable and illusory.

As the OCC notes, "the Commission long ago abandoned any pretense that access charges would be based upon costs – largely because determining costs was a complicated issue subject to considerable dispute."[57] The reality is there is no accepted cost methodology upon which the SLECs could develop a study. Any study presented would be far too costly and controversial to be of any benefit. That is why the practical, common sense revenue-based solution set forth in Appendix A and recognized in SB 162 is the best path.

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[54] *William P. Barr*, "The Gild That Is Killing The Lily," 73 Geo. Wash. Law Rev. 429, 462-63 (2005).
[55] Cincinnati Bell Comments at 6. Elsewhere it states that funding should not be provided unless a POLR failure occurs. *Id.* at 9. This would be irresponsible.
[56] OCC Comments at 7
[57] OCC Comments at 2.

The task of establishing company-specific, cost-based intrastate access rates is daunting and does not address revenue replacement, as this Commission found in 2001:

> Determining company-specific, cost-based access charges for every area of the state is a daunting task. While the Commission between 1983 and 1987 attempted to obtain necessary information to reach such conclusions, we were unsuccessful. Today, we have additional cost information available, but the task would no doubt still be difficult, time consuming, and litigious. Moreover, the cost methodology to be used for determining the appropriate cost of access service is still an unresolved and contentious issue in Ohio. Additionally, we must also acknowledge that changes in access levels can raise concerns over revenue streams that support affordable local exchange service (in fact, such arguments have been raised in the comments in this docket).[58]

It would only be more so today, given the advanced complexity of the market and the dynamic services being offered.

Nor is cost relevant. There is no state legal requirement that access charges be set at cost. Cost-based rates have never been required of LECs in Ohio. This Commission has never stated that all implicit subsidies, if there be any, must be removed. Cost has never been set as the ultimate objective by this Commission. Certainly, there is no such prescription contained in the Ohio Revised Code. The rates approved for telephone companies have *always* been set in a regulatory process that allowed the advancement of public policy goals, including universal service.

Even while recognizing the tortuous and ultimately unsuccessful history of attempting cost-based rate setting[59] and the "insanity" of attempting to do so again,[60] the OCC, nevertheless, bravely counsels the Commission to do exactly that. Instead of the ARF or, maybe in addition to the ARF (it is unclear), the OCC proposes that that an intrastate "high-cost" fund be established

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[58] *In the Matter of the Commission's Investigation Into the Modification of Intrastate Access Charges*, PUCO Case No. 00-127-TP-COI, Opinion and Order entered January 1, 2001 at 12-13.

[59] OCC Comments at 14-17. Nor is the Ohio experience at all unique. Access and local service costing has been largely abandoned by all the state commissions and the FCC.

[60] *Id.* at 14 (footnote 24).

to address carrier access reform.[61] The development of this concept is largely contained in an affidavit attached to the OCC's Comments which is based upon vague economic theories without any discussion how the difficulties of past costing exercises would be avoided.[62] Clearly, the devil is in the details and the OCC fails to reveal, even a little, what it has in mind. It is impossible, therefore, to evaluate the OCC's specifics, since there are none. The only rationale response is – "oh no, here we go again" – being lead down the path of economic theory with no chance of arriving anywhere meaningful.

Similarly, the OCC's affiant suggests that the term POLR should be precisely defined and "the cost of the POLR obligations ... calculated and considered ... on an economic cost basis."[63] As with the high cost fund concept, the OCC's economist offers no detail, only the theory. How the costs would be measured is unstated. The SLECs have never seen the cost of the COLR obligation separately quantified and would not know how to do so without separate account tracking and special accounting systems, which do not exist. The "costs" themselves are undefined and an appropriate methodology has never been set.

*The* major driver of a rural wireline carrier's investments is the rural nature of its loops. The economics of rural service are a straight forward direct relationship between density and cost. The lesser the population density within the service territory, the longer the average loops required to serve the customer base, physical facts which result in higher capital and maintenance costs. The greater the population density, the lesser the investment and cost per subscriber.

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[61] *Id.* at 7.
[62] We are simply advised that "[a] superior public policy outcome can be achieved by fully evaluating the cost basis for any potential basic rate increases associated with access charge reform." *Id.*, Attachment A at 35.
[63] *Id.*, Attachment A at 39.

Assignment of these costs was highly controversial when previously reviewed, because the level of "support" contained in any rate is entirely dependant upon one's view of the proper costs intended to be recovered and the methodology used. The FCC has set access rates "at cost" under their own "no loop" theory.[64] While the federal jurisdiction has excluded loop costs from interstate access rates, this is not to say that no loop recovery is collected from the IXCs and other carriers using the local loop. The FCC has allocated a substantial portion of loop cost, not recovered from the consumer, to the federal universal service fund.

Loop and other fixed costs were removed from interstate per minute charges by the FCC immediately following the passage of the TCA-96 and transferred to several fixed, per line charges, predominantly the CCL, which continued to be charged to the IXCs.[65]

Thereafter, the FCC transitioned away from the CCL by a combination of both increases in end user rates and a universal service support mechanism. The FCC concluded that all federally allocated loop costs should be recovered from end users, but found that the resulting subscriber line charges were too high.[66] The FCC's *CALLS Order* in 2000[67] and *MAG Order* in

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[64] Cincinnati Bell advocates this cost misallocation throughout its Comments. See, for example, Cincinnati Bell Comments at 3 ("The customer of the eligible carriers make and receive intrastate long distance calls and should bear these costs, not unrelated parties."); See also, Cincinnati Bell Comments at 4 (IXCs and other exchange access customers "have nothing to do with the costs [of the local network].").

[65] *In the Matter of Access Charge Reform*, CC Docket No. 96-262 (First Report and Order, released May 16, 1997) at ¶ 6 ("First, we will reduce usage-sensitive interstate access charges by phasing out local loop and other non-traffic-sensitive (NTS) costs from those charges and directing incumbent local exchange carriers (LECs) to recover those NTS costs through more economically efficient, flat rated charges."). Other fixed charges on the IXCs were also implemented, including the PICC and RIC.

[66] *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers; Federal-State Joint Board on Universal Service; Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation; Prescribing the Authorized Rate of Return For Interstate Services of Local Exchange Carriers*; CC Docket Nos. 00-256, 96-45, 98-77 and 98-166; Second Report and Order and Further Notice of Proposed Rulemaking In CC Docket No. 00-256, Fifteenth Report and Order In CC Docket No. 96-45, and Report And Order In CC Docket Nos. 98-77 and 98-166, released November 8, 2001 ("*MAG Order*") at ¶ 17 ("For example, the costs of the common line or loop that connects an end user to a LEC central office should be recovered from the end user through a flat charge, because loop costs do not vary with usage. Yet the SLC, a flat monthly charge assessed directly on end users to recover interstate loop costs, has, since its inception, been capped due to affordability concerns.")

[67] *In the Matter of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers Low-Volume Long-Distance Users Federal-State Joint Board On Universal Service*, CC Docket No. 96-262, CC Docket No. 94-

2001 made specific reductions to remove all implicit support from the interstate access rates of non-rural and rural telephone companies, respectively, and initiated an increase in the end-user charge,[68] as well as new explicit federal universal service mechanisms.

Two federal funds, the Interstate Access Support Fund ("IAS") and the Interstate Common Line Support Fund ("ICLS"), were created for price cap carriers and rate of return carriers, respectively, and represent the "explicit" support that was created when the "implicit" support from interstate access rates was reduced. These funds are similar to the proposed ARF in that they operate as revenue substitution mechanisms. Interstate access charge reductions were not all shifted to the end user through higher local rates, as the IXCs suggest. The IXCs want the federal result, but ignore the federal mechanism, namely use of universal service funds, instead focusing solely on parity and opposing the use of the ARF.

Nor do the "reciprocal compensation" rates used for the exchange of local traffic have any application in this proceeding. Reciprocal compensation rates are based upon forward-looking cost models. While the FCC has endorsed these forward-looking cost models for the non-rural companies, it likewise recognized that "the forward looking cost mechanisms available at that time could not predict the costs of serving rural areas with sufficient accuracy."[69] Forward looking models have yet to be endorsed by the FCC for rural LECs, and in fact thus far have been rejected for rural costing purposes.[70] The problem with the TELRIC method and the

1, CC Docket No. 99-249 and CC Docket No. 96-45, 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 released May 31, 2000 ("*CALLS Order*").

[68] The residential and single line business SLC was increased by $3.00, from $3.50 to a cap of $6.50 per line, where it stands today.

[69] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8937-45 paras. 297-313 (1997).

[70] Sprint Nextel Comments at 1 are wishful thinking ("Ultimately all intercarrier compensation charges should be set at the incremental cost of providing one more minute of service on an existing network.").

lack of loop allocation is that nobody pays for the loop. T-Mobile wants to pay nothing.[71]

The IXCs suggest that local service customers should be forced to absorb the difference between intra and interstate access rates, without assigning any revenue recovery to the ARF. This compels local ratepayers to pay for the entire amount of state loop costs, contrary to prior Commission rulings and fair rate design. By denying any ARF recovery, the IXCs ignore the method by which the FCC achieved those lower interstate rates which are being advocated as the intrastate target. If Ohio is to mirror interstate rates, including the CCL charge, then, so too, it should mirror the interstate means used to accomplish that result – a universal service fund.

A policy that allocates no loop, or any other joint and common costs, to exchange access services is in complete contradiction of customer class fairness,[72] one OCC position with which the SLECs agree.[73] Therefore, the IXCs position that access rates should be reduced to "cost" actually supports an intrastate rate that is *higher* than the interstate rate.

If the Commission were to eliminate the state CCL charge and reduce intrastate rates to parity, without providing corresponding ARF support for loop recovery, IXCs and others using the PSTN would contribute nothing to recovery of the loop costs, and the policies of adequate and reliable universal service at reasonable rates would be borne by the SLECs and their customers alone. In other words, the Commission's universal service and other regulatory and statutory policy goals would be abandoned.

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[71] T-Mobile Comments at 3 ("bill-and-keep").
[72] OCC Comments at 3.
[73] The OCC's affiant recognizes the importance of loop allocation to the theory of cost causation and that parity would "result in the intrastate CCLC being reset to zero," thus allowing the IXCs to avoid paying "a necessary input in the production of long distance calling" and resulting in a lack of loop investment.

Therefore, the accusations of "high intrastate access charges,"[74] "subsidy-laden access cost burden,"[75] "perpetuated unjust enrichment,"[76] or "bloated switched access rates"[77] are not accurate descriptions no matter how many times repeated.

The second critical flaw in the IXCs' reasoning is the assertion that, once identified, all "implicit" support must be removed *and* placed upon local ratepayers (or simply forsaken by the SLECs). Explicit does not mean that at all. Making a charge "explicit" simply means externalizing it and then providing for recovery by another means.

From the very beginning, the goal has been to *replace* implicit support with explicit support to assure continued universal service in a competitive environment. The goal has never been to shift all responsibility to local ratepayers or expose the SLECs to hollow, unmarketable opportunities to recover the lost revenues. The ARF mechanism provides a bridge between lower access rates, the encouragement of competition, network deployment and reasonable local rates.

Finally, any allusion to the ARF as a "hidden tax" is inaccurate.[78] The ARF has nothing to do with raising revenue for the support of government and it, therefore, does not constitute an unauthorized tax. It is an alternative form of compensation for the exchange access services provided to the IXCs by the SLECs. MACC is incorrect to argue that "this is a 'tax on VoIP service," which will "no doubt receive close judicial scrutiny."[79] MACC's comments, however,

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[74] AT&T Comments at 4 and 5.
[75] *Id.* at 5 and 6.
[76] Sprint Nextel Comments at 2.
[77] *Id.* at 4.
[78] MACC Comments at 3; OCTA Comments at 5.
[79] MACC Comments at 4.

do not reference the FCC's *Nomadic VoIP State USF Declaratory Ruling*,[80] where both the taxation question and implied legal uncertainty are put to rest.[81]

Recovery from the ARF is fair and good public policy.

### 3. Calculation of the ARF

On the topic of calculating the ARF, the Comments have tended to focus upon the data year used and the frequency of recalculation. As stated in its Comments, the SLEC Group accepts the proposed use of 2009 calendar year minutes and revenues to calculate the revenues lost as a result of parity, but do no believe that the data should be subsequently adjusted on the basis of declining access lines.[82] As an alternative, the SLECs also suggested a five year reconciliation period, instead of the two years proposed in the Entry.[83]

Other parties have advocated using 2010 data initially and reconciling every year thereafter based upon the most recent calendar year information.[84] Both of these are bad ideas for several reasons.

The objective of a reliable and sustainable fund is thwarted if the amount drawn by the SLECs is changed any more frequently than every five years. There is no indication that the General Assembly envisioned anything other than initial revenue neutrality. There is no

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[80] *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Interstate Revenues*, WC Docket No. 06-122, Declaratory Ruling Released November 5, 2010 ("*Nomadic VoIP State USF Declaratory Ruling*").
[81] SLEC Comments at 14.
[82] *Id.* at 10 ("Certainly, the SLECs will most likely continue to experience the adverse revenue consequences of line loss, because their tariffed local service and access revenues will continue to erode as lines are lost. So, it is only this one aspect of rate design, the ARF, which the SLECs suggest should be maintained as a fixed and predictable source of revenue.").
[83] *Id.* at 11 ("A longer recalculation period has the benefit of capturing predictable receipts over a longer period and is similar to that used for capital expenditure purposes.").
[84] Cincinnati Bell Comments at 12 and 13; AT&T Comments at B-5-6 (Appendix B); and Sprint Nextel Comments at 7.

requirement stated in the statute that would require subsequent recalculation. Periodic changes after the initial calculations are completely within the discretion of the Commission.

The SLECs exclusively serve rural Ohio and have the carrier of last resort obligation to serve each and every customer. The SLECs must invest in their rural networks regardless of declining customer take rates or the increasing presence of competitors. The dynamics of the competitive market were detailed in the SLECs' Comments. Their declining revenues equate to a dwindling base of investment capital. The SLECs cannot exist in unprofitable markets that other carriers like the CLECs choose to abandon, or refuse to serve in the first instance. They have not sought to unload rural properties, as Verizon recently did.

The OCC, itself, calculates that intrastate access revenues for the ILECs has declined from \$83.5 million to \$56.1 million from 2005 to 2009, noting that this "is an **almost 33% reduction** in five years."[85] As also noted, none of the companies has been immune from these declines. At the same time the OCC calculates that earned returns on equity reported over the last five years are, for many SLECs are "low."[86] Rather than be concerned about the continued viability of the rural carriers and continued service to their rural constituency, the OCC suggests, instead, that the focus should be upon ensuring that these alarming declines *continue* in the ARF.[87]

Access revenues have been declining lately, not just due to continuing market share declines, but also due to access charge cheating, including the refusal to pay. Increasingly, all IXCs, including Verizon, AT&T and Sprint Nextel, and not just the smaller, less scrupulous

[85] OCC Comments at 30 (emphasis in original) and Attachment C.
[86] *Id.* at 32; See Attachment C. The use of the five year period 2005-2009 masks the current deteriorated returns by averaging. While the SLECs recite the OCC numbers, they do not endorse them, but simply point out that even the OCC calculates returns that are as low as -17% (Sycamore Telephone), and its erroneous reaction to such figures.
[87] OCC Comments at 30 ("Given that it is reasonable to expect that these declines will continue great care must be exercised to ensure that the assessment process does not overcompensate the ILECs.").

carriers, are simply refusing to pay access on non-meritorious grounds.[88] Using 2010 data, for example, simply captures and then preserves that refusal to pay in the database used to calculate the USF.

In a world where traditional wireline revenues, both local lines and access minutes, continue to deteriorate, the SLECs requested in their Comments that the USF draws be ratcheted down every five years, rather than allowed to plummet, like the current marketplace. A five year track lends some semblance of predictability and stability.

Finally, there is a difficulty and cost of more frequent recalculations upon both the fund administrator and the SLECs. Data tracking, compilation, analysis and reporting are time consuming and burdensome to the SLECs.[89] The same is true of the analysis and implementation required of the PUCO Staff and, if retained, the third-party administrator, which adds costs to the ARF. These burdens increase as the rapidity of the recalculation escalates.

The Fund should initially be set based upon 2009 data and not subsequently recalibrated.

### 4. <u>BLES Increases</u>

Some commenters contend that a fund such as the ARF was not anticipated by the General Assembly as a means of moving intrastate access rates to parity on a revenue neutral basis. Rather, they contend, the SLECs should look first and foremost to raising rates of their own customers to achieve revenue neutrality.[90] Citing Section 4927.15(B) of SB 162, these

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[88] *Matter of the Complaint of AT&T Ohio v. Global NAPs, Ohio, Inc.*, PUCO Case No. 08-690-TP-CSS, Opinion and Order entered June 9, 2010. Global NAPs, CommPartners, ChoiceOne, Transcom are but a few of the unscrupulous IXCs that refuse to pay for the delivery of traffic and victimize all LECs.

[89] Without any explanation, AT&T claims that the Commission should be "skeptical" of any assertion of the costs associated with data collection. AT&T Comments at B-6 (Appendix B). Obviously, such efforts are real and should not be ignored.

[90] For example, Cincinnati Bell suggests that "[a]ll eligible carriers should also be required to recover at least some of the reduction from their own customers." Cincinnati Bell Comments at 13. Of course, Cincinnati Bell also seems to confuse whether it is local or toll customers that should be responsible for paying for the costs related to the

parties argue that, by excepting BLES increases resulting from intrastate access reductions from the act's other limitations to BLES increases, the General Assembly "*expected*" revenue neutrality to be accomplished through rate rebalancing.[91] This contention is simply not supported by the plain language of SB 162, and ignores the clear authority of the PUCO in Section 4927(C) "to create and administer mechanisms for carrier access reform, including *but not limited to,* high cost support."[92]

Had lawmakers intended to raise the rates of rural customers in order to reduce the expenses of Verizon, Sprint Nextel, T-Mobile and the rest, access-to-local rate rebalancing would have been required. It was not.[93] These parties simply ignore the legislative mandate that if any intrastate access reductions are *mandated,*[94] they are to be implemented on a revenue neutral basis without any pre-existing requirement that SLECs rate rebalance first in order to achieve revenue neutrality. Local rate increases, or any rate increases for that matter, are not conditions precedent to revenue neutral access restructuring. While the General Assembly chose not to prohibit further basic rate increases *if* such were the choice of the PUCO, it certainly did not mandate prior rebalancing, and comments that creation of the ARF is improper without consideration of BLES increases are misplaced.

To the contrary, increases to BLES rates are entirely permissive. By statute, the SLECs are allowed access restructuring increases in addition to other BLES increases, but neither they

ability to place and receive toll calls, stating "[t]he customers of the eligible carriers make and receive intrastate long distance calls and they should bear those costs, not unrelated parties." *Id.* at 3.

[91] Comments of Cincinnati Bell at 5 ("This exception was an unmistakable signal from the General Assembly that it *expected* revenue neutrality to be accomplished through rate rebalancing."). Similar suggestions were posited by the OCC, Verizon, T-Mobile and AT&T.

[92] R.C. 4937.15(C).

[93] Thus, Verizon's comments that the Commission should move forward with mandated access rate reductions but provide for revenue neutrality "though rebalancing of [affected Ohio ILECs'] retail rates, rather than through the proposed ARF (or any similar fund)" reads a condition precedent into SB 162 that is not there. Verizon Comments at 2.

[94] As OCC notes, SB 162 does not require parity or, for that matter, any intrastate access reductions at all. OCC Comments at 2.

nor the PUCO are required to implement increases in order to achieve revenue neutrality. And contrary to the suggestion of Verizon, Sprint Nextel, and others, while revenue neutrality through a mechanism of the PUCO's choice, including a fund, *is* mandatory *if* access reductions are ordered, neither access reductions nor local rate increases to accommodate them are. The PUCO is wise not to choose the path of corporate enrichment for the nation's largest communications and data providers at the expense of rural Ohioans, especially when rural customers were abandoned by the same carrier (Verizon) that now seeks to have rural local rates increased.

Setting local rates entails balancing of several considerations. The SLECs contend that raising rural BLES rates in order to provide access expense reductions to carriers is not part of that mix. What is an appropriate consideration is that local service must remain adequate and ubiquitous throughout Ohio at rates that are reasonable and comparable. The ubiquitous availability of adequate and reliable service at reasonable rates is a requirement of SB 162.[95]

As to the "comparability" standard, Section 254(b) of the Federal Telecommunications Act of 1996 ("TCA-96")[96] prescribes that customers in rural areas must have access to services at rates "reasonably comparable" to rates charged for similar services in urban areas.[97]

As the FCC explained:

> Congress adopted section 254 to help ensure that, as competition develops, explicit support mechanisms would replace, as far as possible, implicit support mechanisms in order to preserve the fundamental communications policy goal of providing universal telephone service in all regions of the nation at reasonably comparable rates.[98]

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[95] R.C. 4927.02(A)(1) (service rates must be reasonable) and (3); R.C. 4927.08(A) (service must be available, adequate, and reliable).
[96] 47 U.S.C. § 254(b).
[97] *Id.*
[98] *In the Matter of Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, *Order On Remand*, Further Notice Of Proposed Rulemaking, And Memorandum Opinion And Order (Order released October 27, 2003) at ¶ 16. ("In this Order.....[we] adopt measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers.")

The FCC has consistently recognized that the states set local rates and are best positioned to meet the standard:

> States, of course, retain primary responsibility for local rate design policy and, as such, bear the responsibility to marshal state and federal support resources to achieve reasonable comparability of rates.[99]

The FCC subsequently reaffirmed that authority over the comparability standard lies with "the states [who] retain primary responsibility for ensuring reasonable comparability of rates within their borders."[100] States that have expressly adopted the comparability standard include Arkansas, California, Colorado, Hawaii, Idaho, Indiana, Maine, Missouri, Nebraska, Nevada New Hampshire, Oregon, and Wyoming.

As the Indiana Commission explained:

> On March 17, 2004, the IURC approved the creation of the Indiana Universal Service Fund (IUSF), which was designed to promote universal telephone service in a competitive environment. The purpose of the IUSF is to ensure that consumers in all parts of Indiana have access to telecommunication and information services at rates reasonably comparable to those in urban areas.[101]

Nevada requires that "monthly basic recurring flat rates for basic service must be reasonably comparable to rates charged for similar services in urban areas."[102] In order to be eligible for Maine universal service funding, a rural carrier was required adopt Verizon Maine's basic local exchange rates.[103] In New Hampshire, when a rural carrier applies for an alternative regulation

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[99] *Seventh Report & Order and Thirteenth Order on Reconsideration*, FCC 99-119, CC Docket Nos. 96-5, 96-62 (Order released May 28, 1999) at ¶ 31.
[100] *Id.*
[101] *Home Telephone Co. of Pittsboro, Inc. v. Verizon North, Inc.*, 904 N.E.2d 223, Ind.App. (March 31, 2009).
[102] *Investigation and rulemaking to adopt, amend, or repeal regulations pertaining to Chapters 703 and 704 of the Nevada Administrative Code regarding a regulatory scheme intended to promote more competition in the local telephone market, establish the terms, conditions and procedures under which an incumbent local exchange carrier may be excused from its obligations as the provider of last resort, and reinstatement of those obligations, and other related utility matters in accordance with Assembly Bill 518*, Docket 07-06016, Nevada Public Utilities Commission, Order Adopting Phase V Temporary Regulations (December 23, 2008).
[103] Verizon Maine's rural lines have since been spun off and acquired by rural provider FairPoint Communications.

plan, the plan limits the maximum basic local exchange rate such that the rural carrier's rate cannot exceed the comparable rates charged by the largest ILEC operating in the state.

The dictionary definition of the word "comparable" is "equivalent" or "similar."[104] According to the OCC's calculations on Attachment D, Ohio's statewide average rates are already $15.07 (including the below average rate of AT&T, which provides service to over half of Ohio's ILEC access lines at a rate of $14.45).[105]

If the AT&T below average rate were excluded, the Ohio average state-wide rate rises to $15.73.[106] The PUCO must remain mindful, also, that this rate comparison excludes other charges that comprise the total bill, charges such as zone charges, mileage charges, and the SLC. Some of the SLECs charge mileage and zone charges, which, if included would increase the average rate per line. AT&T's SLC is $5.38, but the SLECs are required to charge $6.50, a rate which is more than 20% higher than AT&T. While AT&T would have a combined rate (Local plus SLC) of $19.83 ($14.45 + $5.38), the remaining companies in Ohio would charge an average of $22.23 ($15.73 + $6.50).

The FCC's Wireline Competition Bureau's Statistics of Communications Common Carriers' Report (released September 2010) calculates the national average rate for residential local service as $ $15.62 per line per month.[107] If those carriers opposed to the ARF are successful, all customers in SLEC rural areas will be charged more than AT&T's Ohio customers and the national average.

While parties opposing the ARF point to SLECs with low BLES rates as proof that BLES increases should be mandatory, these same parties ignore the calling scopes that come

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[104] Webster's Ninth New Collegiate Dictionary.

[105] OCC Attachment D.

[106] In order to avoid factual dispute, the SLECs have used the information contained in OCC Attachment D for purposes of these reply comments without endorsement of the same.

[107] http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301505A1.pdf at Table 5.11.

with low BLES rates. For example, New Knoxville Telephone Company, cited by Cincinnati Bell,[108] has 800 residential customers, or **0.033%** of Ohio's total access lines, with a BLES rate of $6.60.[109] However, these same customers, in the middle of Auglaize County have no EAS calling scopes. Compare this to Cincinnati, where more than 500,000 Ohio access lines can be called on a local (i.e., toll free) basis.[110] Clearly calling scopes must be considered when evaluating BLES rates.

Further, simply adding $0.50 per year without consideration of reasonableness or comparability, as AT&T advocates,[111] is no more than regulatory imposition of an automatic annual local rate increase that continuously ratchets up local rural rates. So customers of Chillicothe Telephone in rural Ross County, a SLEC whose *lowest* basic rate is already at $22.00,[112] will simply see those rates, which are already 50% higher than their AT&T neighbors' rates in nearby urban Franklin County, go higher.

The PUCO must also remain cognizant that the actual bills paid by SLEC customers are already substantially higher than the lowest rates presented by the OCC and others, with SLEC customers also paying 911 charges, TRS charges, mileage or zone charges in some instances, as well as taxes in addition to a $6.50 SLC. Thus the effective billed rate is already well above any rate advocated in this investigation. Arcadia, for example, with a current tariff rate of $24.65,[113] has a billing rate that is almost 50% higher, at $34.31. Additional annual yearly increments of $0.50 to those rural customers to fund access expense reductions to Verizon, Cincinnati Bell and others are patently unreasonable. It makes absolutely no sense to drive the SLECs' rural

[108] Cincinnati Bell Comments at 3.
[109] OCC Attachment D.
[110] 2009 Annual Report of Cincinnati Bell, Schedule 28. All exchange listed on this schedule are toll free for residents of metropolitan Cincinnati. In addition, ten exchanges in Kentucky are included in Cincinnati's local calling area.
[111] AT&T Comments at 7.
[112] OCC Attachment D.
[113] OCC Attachment D.

customers' rates far above either the Ohio urban rate or the national average. The General Assembly and the PUCO Staff got it right. The rural SLEC customers should be indifferent to the impact of intrastate access rate reductions, not substantially worse off.

Moreover, as stated above, those parties that demand the PUCO reduce their intrastate access expenses promise no flow through of these expense reductions to their customers.[114] So while rural Ohioans will see their low rates consistently, and for some substantially, increased, there is no guarantee those same customers will enjoy any tangible benefits. To the contrary, the PUCO should expect that any expense savings Verizon, Sprint Nextel, T-Mobile and the others may enjoy as a result of reduced SLEC rural intrastate access charges will go directly to supporting growth and sustainability in those carriers' wireless business, and most likely in growth markets far removed from rural Ohio. Their costs of doing business in Ohio may decrease, but the economic benefits to Ohio as a result will not increase correspondingly.

Finally, some parties suggest that competition will assure that BLES rates remain reasonable without the need to establish an explicit external funding mechanism.[115] Competition, interestingly, is offered up by those seeking access reductions as substantiating both the need for reduced intrastate access rates (because competition is hindered by higher state rates that are impeding competition) as well as the lack of need for explicit revenue neutral funding (because competition is so rampant that the market alone will assure reasonable local rates). Neither is true. While most if not all SLECs have some form of competition in their service areas given the

[114] Cincinnati Bell (Comments at 20) and the OCC (Comments at 39-40) urge the PUCO to require the carriers that will enjoy access expense savings to pass those savings on to their consumers. However, as the OCC noted, given the transformation of the long distance market and the "all you can eat" plans that no longer distinguish between toll and local calls, it is unlikely that any carrier will be willing, or able, to craft a plan that will assure the PUCO that the expense savings will flow through to Ohio customers, particularly the rural Ohioans whose local rates some ardently advocate must increase in order to generate those access expense savings.

[115] See, for example, the position espoused by T-Mobile: "The presence of this significant intermodal competition will continue to ensure that basic local exchange service functionality is available at affordable rates, which renders a state access fund or a state universal service fund obsolete and unnecessary." T-Mobile Comments at 2.

technological explosion of intermodal competitive models based upon wireless and VoIP options, competition is not ubiquitous, only the SLECs have COLR responsibilities throughout rural Ohio, and not all rural customers have competitive options.[116] Moreover, the stand-alone residential customer who is interested in a reasonable local calling area at a reasonable rate is not interested in a monthly bill in excess of $100 or $200 to cover all his or her limited technological desires. While rampant, competition is not ubiquitous, and the small volume residential users that comprise the majority of the SLECs customer base are not the primary targets of other carriers' competitive offerings.

Rather, competitors continue to adhere to business plans that are based upon profitability, not statutory carrier of last resort obligations that require the continued availability of basic stand-alone service to small volume customers. As statutorily codified in SB 162, these carriers, even if subject to PUCO regulation, are free to abandon service upon 30 days notice.[117] This option is specifically denied BLES provided by incumbents such as the SLECs.[118]

Retail rate increases will accelerate line losses. Increasing the SLEC customers' local rates (while reducing the SLECs' access rates) simply benefits the IXCs' wireless affiliates even more. Sprint Nextel, Verizon Wireless, T-Mobile, and AT&T Wireless all stand to realize even greater competitive gains because of potentially unreasonable local rate increases they propose in this proceeding.

Plus, competition and the statutory requirements of reasonableness and comparability constrain the regulators' ability to impose all access reductions on basic service rates in a manner that will attain revenue-neutrality. Therefore, explicit funding sources to accommodate access

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[116] OCC agrees that the argument that the market will take care of reasonable pricing is of no avail "for those consumers for whom there are no true alternatives." OCC Comments at 2.
[117] R.C. 4927.07(A) and (B).
[118] R.C. 4927.07(C)(1) and 4927.07(D).

restructuring are the only other available means to ensure revenue neutrality, as has already been recognized by the FCC through implementation of the SLC, ICLS, and other access restructuring funding mechanisms.

Even if this Commission concludes it is not mandated by federal law to maintain strict "comparability," maintenance of comparability between rural and urban rates is simply a good policy goal to follow. Comparability ensures reasonableness, adequacy, and ubiquity, all of which are state legislative mandates. Comparability also recognizes the inherent financial differences between carriers allowed to focus on urban profitability, and those that are required to assure adequate and reliable service in oft-ignored rural outposts. An explicit funding source to which all carriers that benefit from the PSTN contribute merely evens out some of those financial differences, to the benefit of all Ohioans.

### C. <u>Contributing Companies and Assessed Revenues</u>

#### 1. <u>Contributing Carriers Should Be Broadly Defined</u>

In its comments, the SLEC Group advocated that wireless and interconnected VoIP carriers, because they also use and are advantaged by the Public Switched Telephone Network ("PSTN") and its ubiquity, should contribute to the ARF as a matter of fairness, sound telecommunications policy and competitive equality.[119] Otherwise, the ILECs, CLECs and IXCs will pay a disproportionate share.

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[119] SLEC Comments at 11-16.

Several of the commenters accept the benefits of access reduction, but seek to evade funding of the ARF, by claiming that the ARF insulates the recipient LECs from the impacts of competition.[120] This is not what the SLECs seek. Nor is it what results from the ARF.

As noted in their comments, the SLECs are the sole carriers of last resort in their rural operating areas and the guarantors of universal service. The isolation of rural carrier service areas obviously creates numerous operational challenges, including longer loop lengths, fewer customers per switch, higher total investment in plant per loop, and higher plant specific expenses per loop than non-rural carriers. Rural carriers also generally have a customer base that includes fewer high-volume users and a lower business customer density, depriving the RLECs of economy of scale.[121]

Competitors seek to serve the "denser" town centers to maintain a reduced cost structure and, thus, enjoy a better cost structure. Yet, they benefit from the SLEC network as the backbone of service for each of these competitors, since without the SLEC network, access to rural customers and their use of the internet, wireless service, and data transfer would all be diminished.

The presence of wireless is substantial. As noted in the SLECs' Comments, fourteen wireless carriers served 9.6 million users in Ohio in 2008, making the wireless segment of the market larger than combined land lines of all the ILECs (4.3 million) and CLECs (1.5 million). Indeed, 80% of all Ohio residents have wireless service, up 50% since 2005, and approximately 15% now rely exclusively on their wireless carrier for service.[122] There are currently 112

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[120] See, for example, Cincinnati Bell Comments at 9 ("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.").
[121] SLEC Comments at 2-3.
[122] *Id.* at 3-4.

wireless carriers submitting federal USF forms that report service activity in Ohio as of December 6, 2010.[123]

The reality of IP deployment has also transcended even the most optimistic forecasts, with VoIP service "represent[ing] a rapidly growing part of the U.S. voice services market"[124] that currently serves over 162 million subscribers.[125] In the last five or so years, many carriers have sprung up that offer IP-based voice services while many existing carriers are transitioning to this next generation technology. There are currently 197 interconnected VoIP service providers submitting federal USF forms that are reporting activity in Ohio as of December 6, 2010.[126] The aggregate level of intrastate retail revenues collected by these interconnected VoIP service providers is presently unknown, but can be determined. Clearly, it will be a large sum, the recognition of which will reduce the contribution rate for the benefit of the current ILEC, CLEC and IXC providers.

As set forth in the SLECs' Comments, any uncertainty about PUCO jurisdiction to collect from interconnected VoIP carriers is now moot given the FCC's recent ruling. The FCC recently affirmed that "the application of state universal service contribution requirements to interconnected VoIP providers does not conflict with federal policies, and could, in fact, promote them."[127] Based upon the FCC's action, the California Public Utility Commission voted on January 13, 2011, to open a proceeding to include all interconnected VoIP providers in that

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[123] The FCC's web site identifies, by state and technology, the carriers submitting Form 499-A (Federal USF) to the Universal Service Administrative Company ("USAC"), available at http://fjallfoss.fcc.gov/cgb/form499/499a.cfm (search terms are "Cellular/PCS/SMR" and "Ohio").
[124] *Id.* at 8-1.
[125] *Id.* at 8-5.
[126] FCC Federal USF reports submitted to USAC available at http://fjallfoss.fcc.gov/cgb/form499/499a.cfm (search terms are "Interconnected VoIP" and "Ohio").
[127] *In the Matter of Universal Service Contribution Methodology; Petition of Nebraska Public Service Commission and Kansas Corporation Commission for Declaratory Ruling or, in the Alternative, Adoption of Rule Declaring that State Universal Service Funds May Assess Nomadic VoIP Interstate Revenues*, WC Docket No. 06-122, Declaratory Ruling Released November 5, 2010 ("*Nomadic VoIP State USF Declaratory Ruling*").

state's universal service assessments.[128] There is no reason for the Ohio Commission to exclude them.

Both wireless and interconnected VoIP should be calculated on the basis of intrastate retail revenue. The SLECs agree with the comments of AT&T on this issue.[129] As a matter of consistency, contributions by interconnected VoIP carriers should and, in view of the FCC's recent ruling, can be required on the basis of intrastate retail revenue and not the VoIP provider's wholesale CLEC.[130] Cincinnati Bell seems to agree on this point also.[131] The SLEC Group also accepts Cincinnati Bell's suggestion that wireless resellers should be included in the funding base.[132]

### 2. <u>The "ARF Surcharge" is a Non-Issue</u>

Access charge reductions, most likely, will solely benefit the SLECs' access customers. The IXCs offer no benefits to be realized in toll rates, as they are no longer actively developing the wireline toll market, but rather are abandoning it.

No flow through of access charge savings is required by the ARP and none is offered by the beneficiaries of these rate decreases. While the IXCs claim that the "more efficient and improved services," will result,[133] these are theoretic benefits, without any teeth and certainly without any enforceability. The SLECs have not recommended that any such promise be

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[128] *Order Instituting Rulemaking on the Commission's Own Motion to Require Interconnected Voice Over Internet Protocol Service Providers to Contribute to the Support of California's Public Purpose Programs*, R11-01-008, January 13, 2010 Business Meeting, http://docs.cpuc.ca.gov/published/agenda/docs/3267_results.pdf.
[129] AT&T Comments at B1-4 (Appendix B).
[130] See SLEC Comments at 15; AT&T Comments at B-4 (Appendix B).
[131] Cincinnati Bell Comments at 10. ("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."). As do the MACC Comments at 4 ("Perhaps the Staff believes that this charge will get passed along to the ultimate consumer, but the complexity of the competitive marketplace may not make that possible and unintended consequences could occur.").
[132] Cincinnati Bell Comments at 18.
[133] AT&T Comments at 6 ("Consumers and policymakers can expect savings and innovation from the local exchange carriers and more efficient and more improved services at the best possible price, as all providers—regardless of technology—will be afforded the opportunity to compete fairly.").

extracted. Without a pledge to flow through reductions to toll customers, the savings realized are for the benefit of the IXCs alone and their discretionary use. It is accurate to presume that IXCs' access expense savings will flow directly to the IXC for whatever purposes they chose.

On the other hand, unlike their access expense decreases, the IXCs have requested permission to track their ARF contribution and charge that back to customers.[134] The SLECs are unsure why the "ARF surcharge," as the OCC describes it,[135] is even an issue. For many of the contributing carriers, specifically wireless, VoIP, and IXCs, the Commission has no jurisdiction to order or prohibit a surcharge in the first place under Substitute Senate Bill 162. The cable association, OCTA, while pointing out the lack of jurisdiction over the pricing of its members' services, states it is "unclear" that its customers will receive any lower prices, but says it will "tax" them with the ARF contribution nevertheless.[136]

But more fundamentally, the access customers will be receiving rate reductions, which are offset by their ARF contribution liabilities. The results for access customers as a group will be "expense neutral." There will be net change in expense for the SLECs' access customers. The benefit is that access "support" generally is made explicit and contribution to the local loop retained.

For this reason, the SLECs do not understand the OCC's position, which is more alarmed about imposition of an "ARF surcharge,"[137] which may or may not occur in a competitive market, than it is concerned about escalating tariffed rural local rates which will be certain and not avoidable for a substantial number of the SLECs' end users. As noted by the OCC, none of the carriers that will benefit from the access decreases has offered to flow the amounts saved

[134] See, for example, AT&T Comments at 8, Cincinnati Bell Comments at 20.
[135] OCC Comments at 7.
[136] OCTA Comments, Appendix A at 12.
[137] OCC Comments at 26. By this, the OCC refers to explicit contributor recovery of the ARF contribution.

through to their Ohio end-users.[138] And while it advocates such, it also acknowledges that the Commission has no jurisdiction to so order.[139] In summary, the access rate decreases and ARF funding obligations are offsetting and, since flow though of the expense reductions cannot be mandated, there is no logic to agreeing that collection of the corresponding ARF increases is appropriate. On the other hand, were a contributing carrier to volunteer to flow through the access decreases and demonstrate that it had done so through reduced long distance rates actually enjoyed by Ohioans, a surcharge upon Ohio customers might be appropriate.

### D. <u>ARF Termination</u>

Verizon, Sprint Nextel, OCTA, AT&T and others contend that the PUCO should provide a more explicit termination date that assures a short-term ARF. As the SLECs contended in their comments, the ARF should provide no predetermined end-date as the PUCO always retains the authority to revisit the ARF if and when circumstances warrant.

Further, termination of a mechanism established to fulfill a statutory mandate of revenue neutrality is a *non sequitur*. If the ARF is terminated, the revenue need previously filled by intrastate access charges does not simply disappear. The SLECs must continue to maintain networks that are capable of providing the adequate, reliable, reasonable, and ubiquitous service that is statutorily required of them. The contention that that the ARF should exist only as a short-lived transitional mechanism until the SLECs are "weaned" from their former revenue source, as Sprint Nextel maintains,[140] does not follow from the mandatory statutory premise that parity be revenue neutral. An ARF of predetermined limited duration, particularly as short as proposed by

[138] OCC Comments at 13 ("... benefits for customers from reduced toll rates in response to intrastate access charge reductions do not appear likely."); ("It is entirely unlikely that the Staff proposal will generate any significant benefits in the form of lower toll rates."); and 27 ("... no reasonable expectation of a drop in toll rates that customers pay.").
[139] *Id.* at 7.
[140] Sprint Nextel Comments at 8.

some parties, would violate the statutory requirement of revenue neutrality as equally as would mandated access reductions that make no provision for revenue recovery. The carrier beneficiaries of the access expense reductions are not forced to forgo those expense savings after three years. The SLECs should not be compelled to forgo the lost revenues either.

### E. **<u>Federal Access Reform</u>**

Finally, some parties urge the PUCO to defer taking state action until the FCC takes a definitive position on intercarrier compensation, universal service, and access restructuring.[141] The SLECs believe the PUCO has statutory support to act, and the discretion to act now if the PUCO so chooses. Staff obviously has given a great deal of consideration to issues and prepared a proposal that best serves the needs of Ohio's rural carriers and communities. Further, despite the outrage of those opposed to a carrier fund, Staff's proposal achieves a good balance between providing access reductions to those carriers that have pressed for them while establishing a minimal expense to all carriers in the state that choose to do business by accessing the PSTN.

For these reasons, the proposed ARF is a proper mechanism to fulfill the intent of TCA-96, as implemented by the FCC on the interstate side, to take the support implicitly provided by access rates and render it explicit, sufficient, and predictable to continue the public policy goals as well as statutory mandates of reasonably priced ubiquitous quality service. While the PUCO could decide to await further FCC action, the SLECs contend it would be equally wise to implement relief along the form already implemented by the FCC, namely the creation of explicit external support mechanism to accommodate further access reductions.

[141] Cincinnati Bell Comments at 15; OCTA Comments at 7; MACC Comments at 6-7; and Frontier Comments at 3. The OCC maintains that there is no statutory reason for the PUCO to engage in further intrastate access reductions. OCC Comments at 2.

## IV. CONCLUSION

The SLEC Group thanks the Commission for its proactive and well-considered initiative to reduce intrastate switched access rates and requests that it adopt the suggestions made in these Reply Comments.

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of the Small Local Exchange Carriers Group was served by electronic mail to the persons listed below, this 19th day of January, 2011.

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