

THOMAS, LONG,
NIESEN & KENNARD

Attorneys and Counsellors at Law

NORMAN J. KENNARD
Direct Dial: 717.255.7627
nkenard@thomaslonglaw.com

July 15 2011

Via Electronic Filing

Renee Jenkins, Secretary of the Commission
Attn: Docketing Division
Public Utility 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 Supplemental Reply Comments of the Small Local Exchange Carriers Group.

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

Very truly yours,

THOMAS, LONG, NIESEN & KENNARD

By


Norman J. Kennard

NJK:tlt
Attachment
cc: Per Certificate of Service

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

1 SLECs participating in this filing are the following: Arcadia Telephone Company, Arthur Mutual Telephone Company, Ayersville Telephone Company, Bascom Mutual Telephone Company, Benton Ridge Telephone Company, Buckland Telephone Company, Champaign Telephone Company, Chillicothe Telephone, Columbus Grove Telephone Company, Conneaut Telephone Company, Continental Telephone Company, Doylestown Telephone Company, Farmers Mutual Telephone Company, Fort Jennings Telephone Company, Germantown Independent Telephone Company, Glandorf Telephone Company, Kalida Telephone Company, Inc., Little Miami Communications Corporation, McClure Telephone Company, Middle Point Home Telephone Company, Minford Telephone Company, New Knoxville Telephone Company, Nova Telephone Company, Oakwood Telephone Company, Orwell Telephone Company, Ottoville Mutual Telephone Company, Pattersonville Telephone Company, Ridgeville Telephone Company, Sherwood Mutual Telephone Association, Sycamore Telephone Company, Telephone Service Company, Vanlue Telephone Company, Vaughnsville Company, and Wabash Mutual Telephone Company.

in stages over a period of years. With its November 3, 2010 Entry, the Commission is poised to bring to conclusion its goal of reducing intrastate access charges to their interstate level for Ohio's rural carriers while continuing to support the public policy goals of universal service, particularly for customers in Ohio's more costly, less populated areas.

All stakeholders and interested parties have been provided the opportunity to submit initial and reply comments, conduct discovery on the data required to implement the ARP, and file supplemental and supplemental reply comments. Following this review, the SLECs maintain their assertion that the Plan proposed by Staff in Appendix A is fair and reasonable. It should be implemented by the Commission with the few modifications proposed initially by the SLECs. The structure of the ARP is a well thought out reform that will further promote a continued vibrant and financially sound telecommunications market in Ohio that benefits all customers.

II. THE OHIO SLECS

The SLECs, at their heart, are pioneers. Over one hundred years ago they formed cooperatives and family-run businesses out of necessity, because no one else found it financially worthwhile to offer voice service to their communities. While, in the past century, the SLECs were the stalwart stewards of traditional telephony service in rural Ohio, they have not lagged behind their urban counterparts in modernization in this century. The SLECs have continued to pioneer through the provision of a whole new generation of services and, today, it is the SLECs that keep *rural Ohio* globally connected.

The SLECs are dynamic, progressive companies that are responsive to their customers' needs and changes in technology while continuing to be a reliable source of both local service and local employment. Though subject to competition from a variety of alternative providers, today's CLECs, wireless, cable, and VoIP providers are very selective in choosing service areas.

Customers located outside of town centers served by the SLECs are more likely to lack competitive alternatives and have no one but the SLECs upon which to rely for service. The SLECs are the designated Eligible Telecommunications Carriers (“ETCs”) for their service territories and they are the carrier of first (and only) resort. Despite the deregulation of S.B. 162, only the SLECs retain the carrier of last resort obligations to serve the least profitable and most costly rural areas.²

The SLECs do not represent a large portion of Ohio’s telecommunications market. Of the total number of access lines impacted by the Commission’s proposed Access Restructuring Plan (“ARP”) and Access Restructuring Fund (“ARF”), the SLECs represent only 96,000 of the voice access lines in Ohio.³ They comprise only 2.5% of all *ILEC* access lines in Ohio⁴ and a mere 0.6% of all 15.658 million *ILEC*, *CLEC* and wireless lines/numbers in Ohio.⁵ The SLECs share of the ARFs projected by both AT&T and OCC at is quite small, but the reward of guaranteeing continued quality rural service in the outlying communities of Ohio is immeasurable.

The Commission has previously recognized the value of those independent, rural networks to the local communities they serve.

Based on current market practices, it is clear that the large telecommunications carriers have no interest in servicing this country’s rural customers, particularly

² Although S.B. 162 deregulated quality of service and the service rates, terms, and conditions for telecommunications services provided by telephone companies, and authorized telephone companies to withdraw or totally abandon service upon thirty days’ notice, the right to withdraw/abandon does not apply to basic local exchange service (“BLES”) provided by incumbents, which must make BLES available to everyone in their territories on a reasonable and nondiscriminatory basis within 5 business days absent a waiver on extraordinary conditions. See R.C. 4927.03(D), R.C. 4927.07(A) and (B), R.C. 4927.07(C)(1) and (D), R.C. 4927.08(B)(1); and R.C. 4927.11(A), (B), and (C).

³ OCC Attachment 1. While some carriers claimed the individual access line counts presented on this attachment as confidential, the SLECs did not. Therefore, reference to the aggregate or even individual SLEC access line totals is not a breach of claimed confidentiality.

⁴ Ohio Telecom Association, *Telecom Competition in Ohio*, April 2009, at 6 (“*Telecom Competition in Ohio*”). Published on the web at http://ohiotelecom.com/files/2009%20Report%20on%20Competition%20-%200402092_0.pdf. Statistics published based upon publically available data sources as described in report.

⁵ AT&T Supplemental Comments at 14.

those in high-cost markets. Certainly some large carriers may wish to “cherry-pick” the best customers from the rural ILECs; however, the Ohio Commission is not aware of a single large carrier willing to serve all rural customers at affordable, reasonable rates. In Ohio, none of the competing carriers have proven willing to take on the POLR obligations presently met by the small, rural ILECs who, over many generations, have built businesses serving their communities by making service available to those least likely to receive telecommunications service otherwise. As regulators and elected officials shift their focus from traditional telephone service to broadband service, it is possible that alternative service providers will endeavor to serve all customers. It is unlikely, though, that these providers will voluntarily assume the POLR obligations traditionally met by the rural ILECs or provide service at affordable reasonable rates.⁶

The RLEC’s services have substantial public value beyond of their native service areas, as well. Absent the SLECs’ rural networks, customers across Ohio would not be able to communicate outside the nuclei of their urban and suburban bases that non-rural carriers flock to serve. The rural infrastructure, therefore, provides a benefit not only to rural customers, but also to customers throughout Ohio that use that network to complete calls throughout the state.

The SLEC network, also, remains a 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. Thus, the SLECs have irreplaceable value within Ohio, to their end users and to the end users of their competitors and other service providers.

As the PUCO’s April 2011 Comments noted, it is “clear” that some carriers have no interest in rural Ohio or its customers. Verizon, for example, one party that advocates mirroring interstate rates at the sole expense of rural end users,⁷ long ago announced its decision that rural customers are not worth the cost of service. As one of the most vocal opponents of an access

⁶ *In re Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, and *Lifeline and Link-Up*, WC Docket No. 03-109, Comments Submitted on behalf of the Public Utilities Commission of Ohio dated April 18, 2011 (“PUCO April 2011 Comments”) at 22-23.

⁷ Verizon Supplemental Comments at 7.

restructuring fund, Verizon has resolutely abandoned rural America, and rural Ohio, instead focusing on its wireless business and FiOS TV and Internet services. As Verizon proclaimed when selling its rural phone lines to Frontier:

*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[.]*⁸

Hence it makes perfect business sense for Verizon to support reduction of its access expenses through increases on rural ratepayers. All gain; no pain.

History is today repeating itself, 100 years after the SLECs were born out of necessity, the large corporations *still* believe that rural properties “really don’t fit with the strategy” It is *still* only the SLECs that will bring these modern services to the less profitable rural areas, so long as they remain financially viable.

As this Commission correctly noted at the start of this proceeding, the carrier access charges “are intended to recover a portion of the cost of the local telephone facilities.”⁹ As the Commission also noted in its Entry, “[c]arrier access charges comprise a significant portion of the revenue received by small incumbent local exchange carriers[,] and the “precipitous decline in the access minutes of use for which [carriers] assess carrier access charges thus erod[ed] a significant pillar of their financial support.”¹⁰ Proposals to continue eroding the SLECs’ financial support at the sole expense of the SLECs’ own end users places the financial burden of universal service solely within rural Ohio. That, however, is not the goal of universal service. Universal service requires a sharing of the responsibility to maintain a reliable and reasonably priced ubiquitous network. Further, failure to establish some explicit support is an end run on rural Ohio that contradicts the access restructuring model established at the federal level.

⁸ SLEC Reply Comments at 3.

⁹ November 3, 2010 Entry at ¶ 2.

¹⁰ November 3, 2010 Entry (emphasis added).

The Commission has also acknowledged the value of access related revenue to maintaining the rural network, including state-of-the art broadband, in urging the FCC to not reduce their federal USF receipts:

Subscribers of DSL broadband service generally receive their service from their local telephone service provider. In Ohio, this includes small, rural independent carriers that are often the only service option for their subscribers.¹¹

As a result of Ohio carriers being ahead of the broadband curve, high-cost support that has previously been provided to these Ohio ETCs and helped them meet or exceed the universalization targets may be redirected out of Ohio through the CAF to other states and regions of the country that are behind the curve. As a result, Ohio subscribers may be left with a proportionally larger tab for high-cost support as well as the additional burden of making up for the lost high cost support in those areas that have been ahead of the broadband curve and may fall behind without that support.¹²

Because of the network improvements made possible by USF funds, many rural ILECs are presently able to offset some lost revenue and access line losses through their ability to provide all of their customers with state-of-the-art service offerings, including broadband coverage over their entire network.¹³

AT&T cites the Commission's words to the effect that this is cross-subsidization and, therefore, inherently bad.¹⁴ Its quotation, however, excludes the Commission's final sentence: "The Ohio Commission believes that this is precisely how the USF was intended to be used."¹⁵

Ohio's SLECs continue to invest in their rural infrastructure. McClure Telephone Company, as but one example, obtained a \$3.5 million loan from the United States Department of Agriculture Rural Utilities Service ("RUS") which it has used to further improve the network in McClure's rural community.¹⁶

¹¹ *In re Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51 and *High-Cost Universal Service Support*, WC Docket No. 05-337 Comments Submitted on behalf of the Public Utilities Commission of Ohio dated July 14, 2010 ("PUCO July 2010 Comments") at 3-4.

¹² PUCO July 2010 Comments at 5-6.

¹³ PUCO April 2011 Comments at 13-14.

¹⁴ AT&T Supplemental Comments at 17.

¹⁵ PUCO April 2011 Comments at 14.

¹⁶ *In the Matter of the Application of McClure Telephone Company for Consent and Authority to Obtain Financing*, Case No. 06-301-TP-AIS, Finding and Order entered March 15, 2006.

The current stream of revenues is important to maintaining those loans, such as McClure's and the network benefits made possible by that financing:

In Ohio, many rural carriers have received RUS loans through the Broadband Initiatives Program (BIP) as well as the more traditional RUS loans or other loans over the years. Through these programs, these ILECs have received millions of dollars for the deployment of broadband service. As is expected with any loan, it is expected that these carriers will repay these loans. In fact, approval for these loans is conditioned on a carrier's ability to repay the loan after reviewing a carrier's business history and revenue forecast.... Consequently, the Ohio Commission does not believe that it would be in the best interests of the carriers that rely on these loans, the loan agents that provide the loans or the taxpayers who have provided the funding for these loans to eliminate USF support for the rural ILECs. Otherwise, it is unlikely that the rural ILECs would be able to honor their loan commitments. Such a scenario would be devastating for the rural ILECs and at the least problematic for RUS and the federal government.¹⁷

Carriers determined to torpedo any effort for rural support selectively choose facts from the overall SLEC data, focus on the most extreme examples from the group to negatively portray and disparage the group as a whole, distorting the true composite picture. Middle Point Telephone Company, for example, a SLEC with 508 access lines and a BLES of \$5.05¹⁸ is portrayed by Verizon¹⁹ as the poster child of low local rates for which immediate access reductions is the only appropriate remedy. It should be noted that Middle Point Telephone Company's average BLES rate is actually \$8.16 per month – 62% higher than Verizon claims – because Verizon did not include mileage charges which are part of the BLES rate. Arcadia Telephone Company, a similarly small SLEC (530 access lines), has a tariffed BLES rate of \$24.54.²⁰ Rather than acknowledge that rebalancing is not the answer for Arcadia and adopt the solution of the ARF, OCTA's recommendation is to simply abandon parity for that carrier.²¹

¹⁷ PUCO April 2011 Comments at 11-12.

¹⁸ OCC Attachment 1 (Nonconfidential number).

¹⁹ Verizon Supplemental Comments at 10.

²⁰ OCC Attachment 1 (Nonconfidential number).

²¹ OCTA Supplemental Comments, Supplemental Declaration at ¶16 (Even if its access rates remain above parity, it "simply does not justify creating a revenue guarantee fund.")

Similarly, when addressing the SLECs' access rates, Verizon focuses upon a single SLEC with the highest access rates,²² while ignoring that the average SLEC intrastate *average* access rate is much lower at approximately 8 cents, 3.5 times lower than the rate chosen by Verizon as the focus of its comments.

There will always be outliers, on both sides, in any data group. They should not be the basis, however, for a balanced and informed Commission decision. The relief provided by the ARF as currently structured appropriately addresses the needs of the SLECs as a group, and by so doing, smoothes out the effects of the outliers.

III. REPLIES TO SUPPLEMENTAL COMMENTS

A. Criticisms of the Staff Plan Should Be Rejected

1. The Parity Objective

On the topic of whether intrastate parity with interstate access rates is an appropriate objective, the parties are as diverse as their interests.

- The IXC's, generally, will receive the greatest benefit and are the greatest cheer leaders for immediate reduction. Verizon, particularly, bashes any intrastate rate higher than its interstate counter part as not "just and reasonable" and specifically as "non-cost-based."²³ The CCLC, it argues, is an "express subsidy."²⁴ The fact that Verizon has undertaken no cost study is not an impediment to its rhetorical excesses, which conclude with the recommendation that there should be no fund. Rural end-user ratepayers and the SLECs themselves should be forced to absorb

²² Verizon Supplemental Comments at 4.

²³ Verizon Supplemental Comments at 4-7.

²⁴ Verizon Supplemental Comments at 5.

the access rate reductions that directly benefit this international mega-carrier, with no obligation on its behalf to flow back any benefits to these same customers.²⁵

- OCTA, whose membership includes Comcast, advocates terminating rates be reduced, but, since it pays no originating access, is willing to ignore that aspect of access charges. OCTA then recommends that all revenue losses be shifted to the SLECs' end-users up to an unreasonable, non-comparable and uncompetitive tariff rate of \$25.00 (before the subscriber line charge and any other add-ons).²⁶
- Several LECs and the OCC argue that access rates should not be reduced at all and the Commission should await the outcome of the FCC's most recent NPRM, its third in ten years -- the prior two having generated monstrous amounts of paper and energy, but no results.

As Ohio's SLECs stated in their original comments, "there is no overwhelmingly compelling reason to set intrastate rates specifically at unity, but it is reasonable to do so, provided that the lost revenues are recovered via the ARF consistent with universal service."²⁷ Parity is simply a form of rate benchmarking, which has been set as a goal in numerous states in the last several years. There may be an advantage to overcoming interstate rate arbitrage, this is but one form of "access cheating" and not even the most virulent.²⁸ While the Commission may choose to pursue this policy, it is under no state mandate – statutory or regulatory – to do so. There is no federal requirement to do so either.²⁹

²⁵ Verizon Supplemental Comments at 7.

²⁶ See SLEC Reply Comments at 31.

²⁷ SLEC Comments at 8.

²⁸ *Id.*

²⁹ 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." *Qwest v. FCC*, 398 F.2d 1222, 1231 (10th Cir. 2005).

The point missed by Verizon and others is that interstate *tariffed* rates are only one component of federal access rates, because a true parity calculation would also include federal USF receipts. This is significant and cannot be simply ignored. The “we-don’t like universal service funds” faction do not oppose the millions they receive in federal funding as a result of prior federal access reform, but oppose a fund in Ohio.³⁰

Loop costs drive rural company costs.³¹ The FCC has set tariffed access rates “at cost” under a “no loop” theory.³² Instead, the FCC allocated a substantial portion of loop costs to the federal universal service fund.³³ Interstate access charge reductions were not all shifted to the end user through higher retail rates, as notably Verizon and OCTA suggest is the appropriate result here. The parity objective of these carriers is to replicate the federal *tariff rate only*. Parties that oppose USF support do so only when it is to their own business advantage. These parties want the federal result, but ignore the federal mechanisms (that many of them also receive); namely use of universal service funds, instead focusing solely on *tariff* parity and opposing the use of the ARF.

Federal funding for the SLECs comes, in part, through the Interstate Common Line Support Fund (“ICLS”), and Local Switching Support (“LSS”). These mechanisms were created for rate of return carriers, and represent the “explicit” support that was created when the

³⁰ 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. http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-284932A1.pdf; Table 19.2. 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. *In the Matter of High Cost Universal Service Support*, WC Docket No. 05-337, CC Docket No. 96-45 (NPRM 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%.”).

³¹ SLEC Reply Comments at 20.

³² SLEC Reply Comments at 21.

³³ SLEC Reply Comments at 21-23.

“implicit” support from interstate access rates was reduced. These funds are similar to the proposed ARF in that they operate as revenue substitution mechanisms.

If a state fund is *not* also implemented in Ohio, then intrastate access rate should mirror the total compensation paid and received by the SLECs at the federal level. In other words, the Commission should use *the “real interstate rate”* as the basis of mirroring. ICLS and LSS revenues should be added to the interstate tariff rate itself³⁴ and the intrastate tariff rate would be no lower than the *combination of both the interstate tariff and the federal USF receipts*. The SLECs certainly do not recommend this result, but it does demonstrate the one-sidedness of the parity-without-a-fund position.

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; one OCC position with which the SLECs agree.³⁵ Therefore, the IXCs position that access rates should be reduced to “cost” actually supports an intrastate rate that is *higher* than the interstate rate. The OCTA position that end users should pay all loop and other “joint and common costs” is equally specious.

In other words, parity is acceptable if performed in a responsible and informed fashion, understanding that revenue responsibility shifts to end user customers are neither.

2. Revenue Neutrality

Sub. S.B. 162 clearly requires that, in the event the Commission orders reductions to intrastate access charges, the reduction “shall be on a revenue-neutral basis.”³⁶ While the determination of “revenue-neutral” is subject to conditions established by the Commission,

³⁴ These figures are available at <http://www.usac.org/hc/tools/disbursements/default.aspx>.

³⁵ OCC Comments at 3. 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.

³⁶ Sec. 4927.15(B).

different parties have proposed different solutions to the revenue-neutral mandate. Some set forth suggestions of revenue-neutrality that fail to provide any meaningful standard for either revenue or neutrality. The SLECs contend that in order to remain revenue-neutral, any reduction in access rates must be made up for by the complete substitution of the dollars lost to interstate parity in a manner that maintains the revenue position of the ILECs. Mandated access reductions will *forever* inure to the benefit of those carriers whose access expenses are reduced. Providing temporal support for access revenue reductions, however, results in a mismatch of benefits that renders the relief on the SLECs end not revenue neutral.

a. Revenue neutrality through non-regulated revenue sources

The OCC demands a full review of all other rates and revenues, with the “first recourse” to come from the SLECs’ non-basic service revenues. The OCC makes this recommendation notwithstanding its full recognition that under Sub. S.B. 162 “all carriers’ non-basic service rates have been deregulated and detariffed.”³⁷ The OCC goes so far as to suggest an appropriate rate for unregulated and detariffed non-BLES services.³⁸ This proposal requires the Commission to act beyond its jurisdiction and, therefore, fails from the start.

As the SLECs have previously contended before this Commission, the Commission may consider only revenues from the services that are within its jurisdiction.³⁹ Its regulatory authority is limited to *intrastate regulated* services.⁴⁰ 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.⁴¹ The Commission is not responsible for the revenues earned from

³⁷ OCC Supplemental Comments at 10.

³⁸ OCC Supplemental Comments at 15.

³⁹ *Smith v. Ill. Bell Tel. Co.*, 282 U.S. 133, 148-49 (1930). See SLEC Reply Comments at 16-18.

⁴⁰ *Smyth v. Ames*, 169 U.S. 466, 541 (1898).

⁴¹ *Brooks-Scanlon Co. v. Railroad Comm’n*, 251 U.S. 396 (1920).

competitive services and cannot influence the revenue or profits for those services. Similarly, the revenues from competitive services reflect the 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.⁴²

The Commission has no jurisdiction over DSL services, ISP services, or video services. These are either regulated by the FCC or not regulated. Therefore, the revenues from federal or unregulated services cannot be used to impute compensation to the SLECs for intrastate access charge reductions. Further, it would be ill-advised for the Commission to establish such a policy. Were it appropriate to consider the SLECs’ competitive service revenues as a source for regulated revenue security, it would only be fair for the SLECs equally to consider the availability of noncompetitive service revenues as a means of shoring up competitive revenue security in less profitable years. Neither is valid or good public policy.

b. Revenue neutrality through local rate rebalancing only

Verizon and OCTA suggest that revenue neutrality should be achieved solely through increases to the SLECs’ customers BLES rates.⁴³ The clear words of S.B. 162 do not support any interpretation that revenue neutrality can or even should be attained exclusively, or even partially, through local rate rebalancing. Recognizing the limitations on BLES increases under section 4927.12 of the Revised Code, the General Assembly provided a statutory waiver for additional local rate increases to support access reductions *if necessary* to achieve revenue neutrality. However, the legislature’s additional inclusion of authority for the Commission to consider “mechanisms for carrier access reform, including, but not limited to, high cost support,” invalidate any contention that local rate rebalancing is the exclusive viable option and that an

⁴² Barr, *et al.*, “The Gild That Is Killing The Lily,” 73 Geo. Wash. Law Rev. 429, 462-63 (2005).

⁴³ Verizon Supplemental Comments at 7; OCTA Supplemental Comments at 1.

external support fund such as the ARF is not warranted. Indeed, it is clearly authorized *without* the condition precedent of prior local rate rebalancing.

Further, any access restructuring mechanism must be sustaining. The SLECs do not contend that revenue neutrality must “maintain historical profitability of intrastate switched access rates.”⁴⁴ To be revenue neutral to the SLECs, however, there must be:

- A meaningful and real exchange of revenue sources;
- From the existing implicit access rate support mechanisms to an explicit external funding mechanism;
- That continues to provide sustainable financial stability for rural carriers.

The rural SLECs with their completely rural service territories do not serve populous and profitable rate centers. They therefore lack the ability to achieve self-sustaining support mechanisms through internal urban, suburban, and rural rate design. Continued financial stability through revenue neutrality is not achieved through a fix that is quick and temporary.

c. Revenue neutrality through individual administrative rate case review

The OCC contends that this Commission should undertake a “company-by-company examination of intrastate access charge reductions” because the current level of intrastate access rates and revenue losses varies among the eligible ILECs.⁴⁵ As part of this presumably on the record proceeding for each individual ILEC, the OCC also contends that “if the Commission does anything in this docket, it should ensure a cost basis for access charges[.]”⁴⁶ Similarly Verizon contends that the “ARF funds would be made available only to those carriers that first

⁴⁴ AT&T Supplemental Comments at 5, note 8.

⁴⁵ OCC Supplemental Comments at 27.

⁴⁶ OCC Supplemental Comments at 31.

demonstrate they cannot recoup access charge revenues through retail rate rebalancing.”⁴⁷ The OCC’s and Verizon’s arguments are inconsistent, impractical, impossible to execute, and unsupported by the new deregulated statutory scheme.

With respect to development of cost-based rates, the OCC recognizes that this Commission “long ago abandoned any pretense that access charges would be based on costs – largely because determining costs was a complicated issue subject to considerable dispute.”⁴⁸ Despite this recognition, OCC continues to call for cost-based access charges. Clearly the OCC’s goal is simply to continue to tie up any further state access reform in litigation and delay. The OCC also proposes individual rate hearings on the basis of the variability among the eligible ILECs’ access rates. Yet, in almost the same sentence, the OCC acknowledges that even after this Herculean administrative effort, variable access rate levels among the ILECs will continue to exist. Thus the OCC’s insistence on individual company hearings to establish individual cost-based rates that in the end will still lead to variable rates is inconsistent, impractical, and impossible to execute.

Verizon’s and the OCC’s insistence on individual rate cases is also unsupported by statute. While the Commission may consider alternate funding mechanisms, including but not limited to a high cost fund, Substitute Senate Bill 162 was in essence a deregulation bill that provided for greater flexibility, not increased regulation. The OCC’s position 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” clearly is a step in the opposite direction from the legislative mandates of S.B. 162.

⁴⁷ Verizon Supplemental Comments at 14.

⁴⁸ OCC Supplemental Comments at 31.

3. BLES Increases

The appropriate benchmark for SLEC BLES rates was the subject of wide disparity among those filing supplemental comments. AT&T proposes a benchmark for SLEC BLES rates “at or above” AT&T’s BLES rate of \$15.50.⁴⁹ Verizon takes note of AT&T’s residential BLES, but proceeds to suggest that a rate of almost twice that might still be appropriate.⁵⁰ The OCC suggests a calculated statewide average ILEC BLES of \$15.07.⁵¹ OCTA proposes statewide benchmarks of \$25 for residential BLES rates and \$35 for business BLES rates.⁵² Cincinnati Bell rejects the AT&T benchmark as “too low” and instead proposes the principle (as opposed to a defined rate) of a statewide average of *all* carriers (not just ILECs) with an “upper limit” determined by affordability, a standard neither presented nor defined in S.B. 162 and also left undefined by Cincinnati Bell.⁵³

As the SLECs previously described,⁵⁴ the setting of an appropriate local rate should take into account many factors, and not merely how much access rate reductions can be flowed through to IXC (and their wireless affiliates) by forcing BLES rates upward. Clearly the Ohio legislature has retained the carrier of last resort obligations as an obligation of the ILECs. Equally clearly the legislature has retained the obligation that service be adequate and reliable as well as ubiquitous from the ILECs.⁵⁵ There is a cost associated with these mandates and that cost should be shared by all carriers that do business in the state.

Verizon, Cincinnati Bell, and OCTA propose BLES rates that far exceed not just Ohio’s state and resident RBOC average, but also the national average rate for residential BLES of

⁴⁹ AT&T Supplemental Comments at 5.

⁵⁰ Verizon Supplemental Comments at 10-11.

⁵¹ OCC Supplemental Comments at 11.

⁵² OCTA Supplemental Comments at 4.

⁵³ Cincinnati Bell Supplemental Comments at 6.

⁵⁴ SLEC Reply Comments dated January 19, 2011, at 29-35.

⁵⁵ 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).

\$15.62. OCTA's unsupported Residential and Business BLES rates of \$25 and \$35 are almost double what OCTA's own members offer to their customers. Buckeye CableSystem offers a "ground" BLES package of unlimited local calls with expanded local calling and free call privacy and inside wire maintenance for only \$13.75/month. For just a few dollars more per month than the OCTA-advocated SLEC BLES rate, Buckeye's customers can get unlimited local calling with expanded local calling area, domestic long distance and international calling to Canada at reduced rates, and substantially more free vertical services. Cox Communication's "Essential" BLES rates is \$19.95, which provides the basic line plus "features customers want most." Similarly, Comcast's "XFINITY© Voice from Comcast" offers unlimited local and long distance calling within the United States, Canada and Puerto Rico, voice mail, 12 popular calling features such as Caller ID, Call Waiting, and more, and Universal Caller ID on a customer's TV and PC.⁵⁶ Clearly non-competitive local rates would push the SLECs' customers, those who have the availability of cable phone service, into the waiting arms of the local cable company.

To accept any of these parties' recommendations would have this Commission sanction BLES rates for SLEC customers that exceed those of their urban and suburban neighbors as well as those of their neighbors across the entire nation. The federal Telecommunications Act of 1996 mandates that customers in rural areas must have access to services at rates "reasonably comparable" to rates charged for similar services in urban areas.⁵⁷

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

⁵⁶ See Appendix A to these replies, which are printed pages from the websites of three of OCTA's members: Buckeye CableSystem, Cox Communications, and Comcast. Comcast's offer is "not available in all areas."

⁵⁷ 47 U.S.C. § 254(b).

providing universal telephone service in all regions of the nation at reasonably comparable rates.⁵⁸

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.⁵⁹

As the SLECs provided in their Reply Comments, other states have already adopted the federal comparability standard. This Commission equally should embrace that concept so as not to create a rural divide in telecommunications pricing policy in Ohio and further reward and encourage carriers to shun rural service territories.

4. Calculation/Design of the ARF

Revenue neutrality involves completely substituting the dollars lost to interstate parity in order to maintain the financial position of the ILECs. Revenue neutrality must provide the SLECs with 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. The proposed ARP accomplishes this legislative objective.

The use of calendar year 2009 data proposed in the structure of Appendix A (to the original Entry) for capturing information to undertake this calculation is supported by the SLECs.⁶⁰ However, the SLECs did contest the proposed biennial recalculation as not revenue neutral, inasmuch as the calculation includes the development of a ratio whereby the SLECs'

⁵⁸ *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.")

⁵⁹ *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.

⁶⁰ Original Entry, Appendix A at ¶¶ 7 and 16.B.

ARF receipts would be reduced, if access lines are further lost⁶¹ as not revenue neutral and bad public policy.

The SLECs' costs are not reduced when access lines are lost, rather they are stranded. Even as the SLECs lose lines to competition, they must still maintain the associated plant and stand ready to serve. The revenue losses directly and adversely affect their ability to perform the public policy COLR functions in an era of competition, when no one else will guarantee service.⁶²

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. In this way, one aspect of the "pillar of financial support" referred to in the Entry is maintained. This is consistent with the position taken by the Commission before the FCC on the topic of eroding federal USF support.⁶³ As this Commission stated to the FCC on the topic of withdrawing (or diminishing) high cost funding:

For carriers like Ohio's small, rural telephone carriers who rely on high-cost support as a significant revenue source, such uncertainty will likely make business planning difficult, especially when coupled with access reform as is proposed in the NBP.⁶⁴

The same is equally true of any reductions in the ARF.

In the event that the Commission, nevertheless, believes that periodic recalculation should occur, the SLECs request that their recalculation be performed at the longer interval of

⁶¹ SLEC Comments at 9-10. The SLECs, most likely, will continue to experience the adverse revenue consequences of line loss, because their local service and access revenues will continue to erode as lines are lost.

⁶² 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. R.C. 4927.07(A) and (B). This option is specifically denied BLES provided by incumbents such as the SLECs. R.C. 4927.07(C)(1) and 4927.07(D).

⁶³ PUCO July 2010 Comments at 7 ('To control the size of the fund, the support levels should be capped or frozen at 2010 levels, with the realization that they may need to be adjusted from time-to-time.').

⁶⁴ PUCO July 2010 Comments at 25.

five years. 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.

On the issue of termination of the ARF, several parties contend that the PUCO should specify an explicit, near term end date. As the SLECs contended in their comments and reply, the ARF should provide no predetermined end-date as the Commission always retains the authority to revisit the ARF if and when circumstances warrant.⁶⁵

Termination of a mechanism established to fulfill a statutory mandate of revenue neutrality is a *non sequitur*. If the ARF is terminated, the SLEC 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 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 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.

B. Response to Non-AT&T Parties

It is clear from a reading of the supplemental comments that the provision of additional time and data did little to sway any party's initial position.

⁶⁵ SLEC Comments at 20-22 and Reply Comments at 40.

If a party stands to *increase* net income by cutting an expense they pay to the SLECs, whether that party, such as OCTA, selectively competes with the SLECs, or like Verizon, which simply avoids the SLECs, that party seeks to maximize and retain the full extent of that expense reduction all while terminating any responsibility to contribute to the common good behind the state-wide telecommunications policy of universal service. If a carrier competes against the SLEC, it also wants the SLECs local rates to be hiked as far as possible to gain market share in that way. Many parties to this case, notably IXC's with wireless affiliates and cable companies, seek to have their wholesale expenses reduced and their retail market share expanded due to the shift in revenue responsibility from access rates to local rates. Nothing in S.B. 162 supports such a proposal.

This self-serving imbalance behind those carriers' proposals is best exemplified by OCTA's plan. OCTA contends that access reductions to parity are absolutely necessary and must be made *exclusively* through local rate rebalancing to a BLES rate of \$25.00. For those SLECs who, under OCTA's proposal, would have local rates above \$25.00 after access rebalancing, parity and rebalancing both are suddenly unnecessary because only a small number of carriers and lines are affected. Apparently 0.6% of the total access lines in Ohio (the total percentage of SLEC lines affected by the Commission's proposed ARP) is not small enough to forgo full parity, but the lines of 11 of them (0.4% of the state total) is not significant.⁶⁶ This is not public policy, but simply selective SLEC-hunting.

Also as a matter of self interest, OCTA supports parity *only* for terminating access rates. Since OCTA members are not IXC's and do not handle originating LEC traffic (only their own), *originating* access is a thing of the past because no one really signs up for stand-alone long distance service and the Commission need not worry about the principle of parity for access rates

⁶⁶ OCTA Supplemental Comments, Supplemental Declaration at ¶16.

as a whole, but only with respect to terminating rates.⁶⁷ Of course, OCTA's members only pay terminating access rates, so parity for originating access rates is of no value, and therefore no principle either.

Also, as demonstrated above, OCTA's proposed BLES would create SLEC BLES rates that are almost *two times* OCTA's members' rates and that provide basic local dial tone only without any add-ons such as long distance or custom calling features. The net effect, therefore, of OCTA's proposal, is to bring to parity only those rates that reduce its members' expenses, and at the same time drive up SLEC customers' rates to levels that are uncompetitive for SLECs' customers in those areas where OCTA's members choose to serve.

The imbalance of OCC's interests in this proceeding is also reflected clearly in its proposal. First, OCC firmly believes that access rates should be left alone. The best way to accomplish this goal is to bog down the proceeding in litigation. From the start, the OCC has demanded hearings, and it continues to do so in its supplemental comments.⁶⁸ However, at no point in its demand for hearings has OCC identified any issue that requires an on-the-record proceeding with the need for cross-examination of witnesses.

In its original November 19, 2010 Motion to Intervene and for Hearing ("OCC Motion"), the OCC presented five issues it asserted required a hearing. These included the level of any reductions, the meaning of revenue neutrality, the manner of recoupment, and the financial impact of reductions and recoupment. It was particularly the issue of the impact of recoupment from contributing carriers that the OCC specifically contended required a hearing and cross-examination."⁶⁹ The OCC continues to present these same issues today, despite the receipt of and

⁶⁷ OCTA Supplemental Comments, Supplemental Declaration at ¶8 ("Originating access is a vestige of a market structure that has virtually disappeared.")

⁶⁸ OCC Supplemental Comments at 28.

⁶⁹ OCC Motion at 7.

conduct of discovery on the data provided to the Commission to flesh-out the financial impacts of the proposed ARP.⁷⁰

As the SLECs contended then and now, the OCC's issues are best resolved by legal argument and policy interpretation presented through comments and replies, and not through protracted, expensive and time-consuming cross-examination of witness' testimony. The OCC's issues are mainly policy and legal argument: whether access should be reduced and if so to what level; and how should revenue neutrality be defined and revenue loss recovery be attained. The only "fact" issue raised by OCC is what the financial impact will be from access reductions. While this is a "fact" issue, it simply requires the provision of data, which the SLECs have already done. The provision of data by itself does not require a hearing and cross-examination. It, too, can be addressed through paper filings, as this Commission has proceeded to do. This Commission has already acknowledged that "access reform is an important policy decision[.]"⁷¹ Policy and legal determinations are properly the subject of comments and replies, as the Commission has conducted here, not adversarial hearings.

The OCC's proposals to reregulate deregulated non-BLES services in order to protect the customers of IXC's from a surcharge that may be passed on to recover the IXC's' contributions to the ARF are also misguided. It has been and remains absolutely confounding to the SLECs that the OCC in this proceeding champions the rights of competitive customers of deregulated IXC carriers, the numbers of which, according to OCTA, are apparently few, at the expense of rural Ohioans. While the OCC holds itself out as Ohio's "residential utility consumer advocate,"⁷² its advocacy in this proceeding fails to serve the interests of Ohio's SLEC residential utility customers, who will be subject to inordinate BLES rate increases under the OCC's proposal.

⁷⁰ OCC Supplemental Comments at 28.

⁷¹ 00-127 Opinion and Order at 13.

⁷² www.pickocc.org.

Like OCTA, Verizon's position is simply to lower its access payments and require SLEC customers to pay more. As Verizon states, "[a]s a matter of public policy and economic efficiency, Ohio ILECs can and should look to their own customers instead of their competitors to offset the revenue impact of reduced intrastate switched access rates."⁷³ Verizon presents no balanced interests or responsibility for the common good.

C. Response to AT&T

AT&T portrays its status in this proceeding as "the only party that provided specific alternatives to the Staff's Plan."⁷⁴ AT&T's "Plan" is a redline mark up of Appendix A to the original Entry. These redlined changes simply reflect AT&T's policy advocacy. In truth, all parties have a "Plan" and reducing them to a redline version does not elevate AT&T's policy position to a status greater than the others. OCTA and OCC, to name a few, also describe their position as alternative "Plans." The SLECs, for their part, also have a "Plan" and, except for a few changes set forth in their Comments and Reply Comments, the SLECs' Plan is Appendix A to the November Entry.

The redlining by AT&T *is* helpful, particularly in addressing the language needed to recognize the FCC's Order of November 5, 2010 which endorsed the inclusion of VoIP providers as contributors to state funds (addressing the safe harbor rule, etc.), as was also recommended in the SLECs' Comments.⁷⁵ Wholesale CLECs were removed, ostensibly for the same reason explained in the SLEC Comments.⁷⁶ Fundamentally, the red lines are simply AT&T's inclusion of its own terms into the original Appendix A of the Entry.

⁷³ Verizon Supplemental Comments at 12.

⁷⁴ AT&T Supplemental Comments at 2.

⁷⁵ SLEC Comments at 14-15.

⁷⁶ SLEC Comments at 15.

Resolution of the issues in this case turns upon whether the merits of a party's policy position articulated in its own self-interest serves the public interests such that it should be adopted by the Commission. The main SLEC issues with AT&T's proposal remain the same as have been discussed extensively previously, including:

- Annual reconciliation and declining SLEC receipts from the ARF;⁷⁷
- Annual increases in basic local exchange service;⁷⁸ and
- End-user contribution recovery language.⁷⁹

The disagreement between the SLECs and AT&T on these issues has been elsewhere addressed, including in these reply comments.

AT&T presents a comparative calculation of the ARF were its policy position adopted and then under Appendix A of the Entry.⁸⁰ There is no back-up provided to AT&T's analysis and no details regarding the underlying assumptions. The SLECs cannot find, for example, where AT&T discloses the factor used to forecast future declining minutes and lines of the recipient companies, although clearly these assumptions are of major importance to the analysis, since AT&T uses the end result to demonstrate the contributor "savings" over an eight year period.⁸¹

These are key factors and, by not disclosing them, the AT&T calculations are impossible to evaluate. Therefore, its claims of savings are not reliable, since it is not verifiable. More fundamentally, however, AT&T's calculations are superfluous. The SLECs' line and minute losses will likely continue, but at what rate and over what time frame is impossible to project.

⁷⁷ Addressed at SLEC Comments at 10-11 and SLEC Reply Comments at 25-27.

⁷⁸ Addressed in SLEC Reply Comments at 27-35 and *supra*.

⁷⁹ Addressed in SLEC Reply Comments at 38-40. The SLECs still do not understand how the IXC's and other carriers getting access reduction and paying into a Fund, also can justify a separate end-user charge where they have not also agreed to flow the access reductions through.

⁸⁰ AT&T Supplemental Comments at Appendix B.

⁸¹ AT&T does not, however, calculate the savings to them selves of access reductions. This is only a calculation of how much less it will pay into the fund.

Therefore, any estimate of the effect upon the ARF is also completely speculative and any calculations based upon an assumed rate of decline are of little or no real value. All that can be factually said is that AT&T's proposal, on day one offers less money to the SLECs, because, as a matter of known historical fact, their 2010 revenue data was less than the 2009 data proposed for use in Appendix A to the Entry. Thereafter, any attempt to quantify future results is a flawed exercise and of no real value.

The issues before this Commission is a public policy debate and, on the merits, of those arguments, the Commission should decide. Speculative calculations using undisclosed assumptions do not benefit the debate, but rather detract from it.

D. Federal Access Reform

The SLECs understand the Commission's desire to promptly reduce intrastate access rates to parity and, therefore, support the Staff's plan, as described previously.

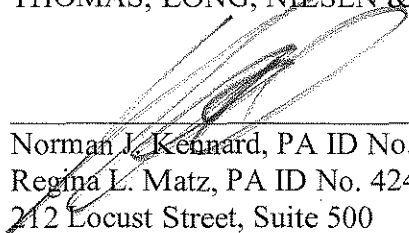
Some parties have urged the Commission to defer taking any state action whatsoever until the FCC takes a definitive position on intercarrier compensation, universal service, and access restructuring. The SLECs believe the Commission has statutory support and the discretion to act now, if it so chooses. 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.

When the FCC may act and when it might do so is conjecture this point. Once it does, the appeals will be without end. The SLEC have lost faith in the FCC's ability to lead. We need to do what is right for rural Ohio.

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 Supplemental Reply Comments.

THOMAS, LONG, NIESEN & KENNARD




Norman J. Kennard, PA ID No. 29921
Regina L. Matz, PA ID No. 42498
212 Locust Street, Suite 500
P.O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600

Attorneys for the
Small Local Exchange Carriers

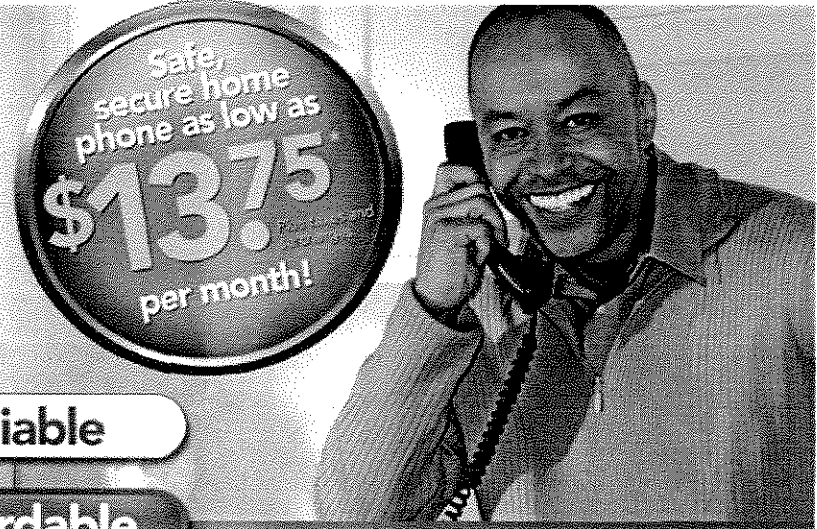
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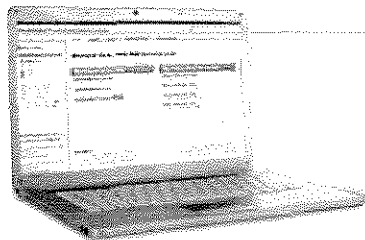
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Unlimited local calling		✓
U.S. and Canada long distance		- Unlimited
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Supplemental Reply Comments of the Small Local Exchange Carriers Group was served by electronic mail to the persons listed below, this 15th day of July 2011.

Mary Ryan Fenlon
Jon F. Kelly
AT&T Services, Inc.
150 East Gay Street, Room 4-C
Columbus, OH 43215
mfl1842@att.com, jk2961@att.com

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

Charles Carrathers
Verizon
600 Hidden Ridge HQE03H51
Irving, TX 75038
chuck.carrathers@verizon.com

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

Stephen M. Howard, Esquire
Benita A. Kahn, Esquire
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, OH 43216-1008
smhoward@vorys.com
bekahn@vorys.com

David C. Bergmann
Terry L. Etter
Assistant Consumers' Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215
bergmann@occ.state.oh.us
etter@occ.state.oh.us

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

Garnet Hanley, Esquire
T-Mobile USA, Inc.
401 9th Street, NW, Suite 550
Washington, DC 20004
Garnet.Hanly@T-Mobile.com

David Haga
Verizon
1320 North Courthouse Road
Arlington, VA 22201
david.haga@verizon.com

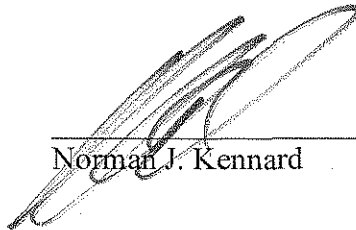
Diane C. Browning, Esquire
Sprint Nextel
6450 Sprint Parkway
Overland Park, KS 66251
diane.c.browning@sprint.com

Thomas O'Brien, Esquire
Bricker and Eckler, LLP
100 South Third Street
Columbus, OH 43215
tobrien@bricker.com

Barth E. Royer
Bell & Royer
33 South Grant Avenue
Columbus, OH 43215-3927
barthroyer@aol.com

Kevin Saville, Esquire
Frontier Communications Corporation
2378 Wilshire Boulevard
Mound, MN 55364
kevin.saville@ftr.com

Zsuzsanna E. Benedek, Esquire
CenturyLink
240 North Third Street, Suite 300
Harrisburg, PA 17101
sue.benedek@centurylink.com



Norman J. Kennard

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