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Case No. 95-845-TP-COI -1-

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC
95-116

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission)
Investigation Relative to the Establishment)
of Local Exchange Competition and Other) Case No.
95-845-TP-COI
Competitive Issues.)

FINDING AND ORDER

The Commission finds:

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BACKGROUND:

On September 21, 1995, this Commission formally initiated this proceeding seeking to establish competition in the last segment of monopoly authority in the telecommunications arena--the local exchange market. Establishment of competition in the local exchange market is by far the most ambitious and difficult of all the markets to

be opened to competition. The path on which we now embark is daunting, but

nevertheless one we must travel especially in light of the enactment of the

Telecommunications Act of 1996 (1996 Act). Before commencing on this journey, it is

appropriate to briefly review intrastate regulatory initiatives that have led us to this

point.

At the turn of the twentieth century, the telephone industry was characterized by

many small providers stringing telephone lines throughout the more urbanized areas

and connecting users to separate independent networks. Often, these providers

competed directly with each other for customers within the same geographic operating

areas. In 1911, the newly-reformed Public Service Commission (later renamed the

Public Utilities Commission of Ohio) was empowered with broad legislative authority

over telephone companies to establish regulations which would protect the public

interest in such an environment. In an effort to encourage telephone companies to

universally expand their facilities to pass all homes throughout the state, the

Commission authorized those providers to establish operating areas. The

Commission's authority over competition and its role in encouraging expansion of

facilities and services was explicitly acknowledged by the Ohio Supreme Court in *Ashley*

Tri-County Mut. Tel. Co. v. New Ashley Tel. Co., 92 Ohio St. 336 (1915), and *Celina &*

Mercer County Tel. Co. v. Union-Center Mutl. Tel. Ass'n., 102 Ohio St. 487 (1921). This

trend was not unique in Ohio and was being pursued throughout much of the country

at the time. In fact Congress, in passing the 1934 Communications Act, stated that one

of the primary goals of that legislation was to "make available, so far as possible, to all

the people of the United States a rapid, efficient, nationwide, and world-wide wire and

radio communication service with adequate facilities at reasonable charges. . . ." 47

U.S.C. 153.

The near monopoly provision of local exchange telephone service, characterized

by one provider per market, has served well the purpose for which it was intended. The

downside of monopoly authority is that regulation and regulators must replace the

competitive marketplace in order to ensure that monopoly providers use their

authority in a manner which benefits the public interest. The technological advances of

the second half of the twentieth century along with legislative changes embodied in

Section 4905.02, Revised Code, recently passed Senate Bill 306 and the 1996 Act have

made it possible to reconsider the regulatory compact and to determine to what extent, if

any, this Commission can substitute competitive market forces in place of regulatory

forces.

Due in part to technological developments and an emerging

change in the federal

regulatory approach, this Commission, in an April 9, 1985,
Finding and Order in In the

Matter of the Commission Investigation Into the Regulatory
Framework for

Telecommunication Services in Ohio, Case No. 84-944-TP-COI (944),
determined that its

traditional regulatory approach should be relaxed and streamlined
to the degree

competition replaced regulation while still safeguarding the
public interest. The 944

order recognized that many segments of the telecommunications
industry were, by

then, no longer characterized by the monopolistic behavior of a
few players, but rather

by a burgeoning field of entities looking to compete in a
competitive

telecommunications marketplace. Under 944, the Commission
retained full regulatory

jurisdiction while affording providers of competitive
telecommunication services

significant ratemaking flexibility.

On August 2, 1986, the Commission, recognizing that
additional ratemaking

flexibility was warranted and opened In the Matter of Phase II of
the Commission's

Investigation Into the Regulatory Framework for Competitive
Telecommunication

Services in Ohio, Case No. 86-1144-TP-COI (1144). Under 1144,
the Commission, among

other things, established a streamlined proceeding in which a
company could, through a

self-complaint process, increase the rates for competitive
services without having to file

a general rate case under the traditional ratemaking methodology.
The Commission

went on to conclude, however, that it was without the necessary
legislative authority to

create as flexible a regulatory framework as might have been
warranted at the time. On

October 14, 1988, legislation was introduced in the Ohio General
Assembly which would

have among other things, established alternative regulatory
requirements for

competitive telephone companies and established a policy for the
state which embraced

diversity of suppliers, universal service, and the maintenance of
reasonable rates.

On December 15, 1988, Amended Substitute House Bill No. 563
(H.B. 563) was

signed into law which enacted several new statutes including
Sections 4905.402 and

4927.01 through 4927.05, Revised Code. This legislation (which
primarily took effect on

March 17, 1989) authorizes the Commission, among other things, to
exempt a telephone

company, with respect to a competitive telecommunications service
it provides, from

compliance with existing statutory provisions regarding
ratemaking or any other aspect

of telephone company regulation, or to prescribe alternative
regulatory requirements

applicable to such service and company; to use ratemaking methods
different than those

in existing law to set rates for basic local exchange service and
other

telecommunications services not found to be competitive; and to
exempt certain local

exchange carriers (those having less than 15,000 access lines)

from various provisions of

existing law or to prescribe alternative regulatory requirements for that company and its

services. The General Assembly adopted Section 4927.02, Revised Code, which provides

that it is the policy of this state to:

(1) Ensure the availability of adequate basic local exchange service

to citizens throughout the state;

(2) Maintain just and reasonable rates, rentals, tolls, and charges

for public telecommunications service;

(3) Encourage innovation in the telecommunications industry;

(4) Promote diversity and options in the supply of public telecommunication services and equipment throughout the state; and

(5) Recognize the continuing emergency of a competitive telecommunications environment through flexible regulatory treatment of public telecommunication services where appropriate.

Following the adoption of H.B. 563, the Commission initiated several dockets

designed to implement these provisions. First, the Commission opened In the Matter

of the Commission Investigation Into Implementation of Sections 4927.01 Through

4927.05, Revised Code, as They Relate to Competitive Telecommunication Services,

Case No. 89-563-TP-COI (563), on April 12, 1989. The purpose of this docket was to

revisit whether, in light of the legislative changes made by H.B. 563, the then-current

regulatory framework for competitive telecommunication service providers was

appropriate. By order adopted on October 22, 1993, as modified on rehearing on

December 22, 1993, we determined that additional regulatory flexibility was warranted

for competitive telecommunication service providers.

Recognizing the small customer bases and limited resources of those incumbent

local exchange companies (ILECs) serving fewer than 15,000 access lines in Ohio, on

June 20, 1989, the Commission initiated a docket, to address the appropriateness of an

alternative form of regulation for small LECs, In the Matter of the Commission

Investigation Into the Implementation of Sections 4927.01 to 4927.05, Revised Code as

They Relate to Regulation of Small Local Exchange Telephone Companies, Case No. 89-

564-TP-COI (564). That proceeding culminated in the adoption of alternative regulatory

requirements involving rate and tariff changes effective September 1, 1991.

On July 2, 1992, after a detailed informal workshop process open to all

stakeholders, the Commission initiated a docket, In the Matter of the Commission's

Promulgation of Rules for Establishment of Alternative Regulation for Large Local

Exchange Telephone Companies, Case No. 92-1149-TP-COI (1149), to establish a

framework whereby large LECs could seek to utilize the flexibility found in Sections

4927.03 and 4927.04, Revised Code, concerning exemption from or alternative regulatory

requirements for certain telecommunications services. In adopting our order in that

matter, we stated that "[T]hese rules are simply the next step begun in our 944 cases to

relax regulation as we move toward a more competitive environment." Today, we take

that next transitory step toward a fully competitive market in which consumers benefit

from more rapid deployment of advanced technology, more choices of providers, and

the potential of lower prices for all.

By entry issued on September 27, 1995, we opened this docket and invited

interested stakeholders to formally comment on staff's proposal concerning the

establishment of local exchange competition in Ohio. We recognized at that time that

staff's proposal had already been the subject of significant input from interested

stakeholders.¹ In order to reach out and obtain input from Ohio's telecommunications

users and in order to allow those persons not wishing to file formal comments to be

heard on this matter, the Commission scheduled and published notice of a number of

public meetings to be held around the state. The Commissioners personally conducted

public forums at Athens, Cleveland Heights, Cleveland, Warren, Dayton, Cincinnati,

Vanlue, Akron, Toledo, and Columbus between October 11 and November 1, 1995. At

those meetings, members of the public were invited to share their views and express

their concerns regarding the staff's local competition proposal. The public's comments

were transcribed and made a part of this docket. In addition, the Commission has

received, throughout the comment process, a number of letters from the public which

have been made a part of the record in this case. The Commission received initial and

reply comments to the staff's proposal from various stakeholders on December 14, 1995,

and January 31, 1996, respectively.

Subsequent to the submission of reply comments in this matter, the United States

Congress passed legislation and the President signed such legislation overhauling the

Communications Act of 1934. This newly enacted legislation (the 1996 Act) touches on a

number of issues addressed in the staff's local competition proposal. On February 20,

1996, Ameritech Ohio (Ameritech) filed a motion seeking to establish an expedited

supplemental pleading cycle as a result of the passage of the 1996 Act. The attorney

examiner assigned to this matter found Ameritech's motion well-made and,

consequently, directed interested stakeholders to file supplemental comments by March

8, 1996, and supplemental reply comments by March 15, 1996. The record in this matter

reveals that the following entities have, at some point in this proceeding, submitted

initial comments, reply comments, supplemental comments, or supplemental reply

comments:

MFS Communications Company, Inc.; Ohio Cable Telecommunications Association; MCI Telecommunications Corporation; Cincinnati Bell Telephone Company; Enhanced Telemanagement, Inc.; Time Warner Communications of Ohio; The Office of the Consumers' Counsel; ALLTEL Ohio, Inc. and The Western Reserve Telephone Company; United Telephone Company of Ohio and Sprint Communications Company, L.P.; Ameritech Ohio; The Ohio Telephone Association; Chillicothe Telephone Company; Century Telephone of Ohio, Inc.; the small local exchange telephone companies of Ohio; ICG Access Services, Inc.; USA Mobile Communications, Inc. II, Maximum Communications, Inc., MobileComm of the Northeast, Inc., Paging Network of Ohio, Inc. and Southern Communication Services, Inc.; City of Columbus; cities of Delaware, Dublin, Upper Arlington, Westerville, Worthington, and the Village of Powell; Telephone Service Company; New Par; Appalachian People's Action Coalition; Telecommunications Resellers Association; Ashtabula County Telephone Coalition; Ohio Direct Communications, Inc. and Ridgefield Homes, Inc.; National Emergency Number Association; Communications Buying Group, Inc.; United States Department of Defense and all other Federal

Executive Agencies; City of Cincinnati; Ohio State Legislative Committee of the American Association of Retired Persons; AT&T Communications of Ohio, Inc.; City of Cleveland; Competitive Telecommunications Association; City of Toledo; Ohio Domestic Violence Network; Scherers Communications Group, Inc.; Westside Cellular Inc. dba Cellnet of Ohio, Inc.; GTE North Incorporated; Edgemont Neighborhood Coalition; and TCG Cleveland.

After reviewing the staff's proposal, appended to the September 27, 1995 entry,

the comments, reply comments, and supplemental comments submitted in this matter,

the testimony given at the forums, and the letters filed in this docket, the Commission

is, today, adopting a new regulatory framework to govern local exchange competition in

Ohio as set forth in Appendix A. This new regulatory framework will be referred to

throughout this order as the revised local competition guidelines (guidelines).

References to the initial guidelines appended to the September 27, 1995 entry will be

referred to as staff's proposal.

DISCUSSION:

A. Legal Authority

Before commencing with a discussion of the regulatory

guidelines which will

govern local exchange competition, we must address the Commission's legal authority

for promulgating the new guidelines. In its Appendix A filed on December 14, 1995,

Cincinnati Bell Telephone Company (Cincinnati Bell)², citing to Canton Storage &

Transfer Co. v. Pub. Util. Comm. of Ohio, 72 Ohio St. 3d 1 (1995), argues that the

Commission is a creature of statute and can only operate consistent with its legislative

authority. Cincinnati Bell posits that the Commission failed to cite any statutory

authority which permits it to adopt rules to govern local exchange competition.

Cincinnati Bell claims that Section 4927.02, Revised Code, does not authorize this

proceeding and, in fact, Section 4927.03(B), Revised Code, expressly prohibits the

Commission from approving or authorizing:

. . . any exemption from or modification of any provision of Chapter 4905 or 4909 of the Revised Code or order issued under them which would impair the exclusive right of any telephone company under those chapters, rules, or orders to provide basic local exchange service in the local service areas in which such service is provided by the Company on the effective date of this Section.

Since, in many instances, the staff's proposal authorizes exemptions from or

modifications to the provisions of Chapters 4905 and 4909, Revised Code, Cincinnati

Bell claims that these guidelines impair Cincinnati Bell's "exclusive right" to provide

basic local exchange service. Cincinnati Bell further avers that the implementation of

local exchange competition is a quasi-legislative function which cannot be delegated to

the Commission without express statutory authority. In support of this position,

Cincinnati Bell points to Section 1, Article II of the Ohio Constitution which vests all

legislative power in the General Assembly and Section 26, Article II of the Ohio

Constitution which has been interpreted to prohibit the delegation of this legislative

authority except where the General Assembly has provided sufficient, definite standards

with which to use the power. Independent Insurance Agents of Ohio, Inc. v. Duryee, 95

Ohio App. 3d 7 (1994) Cincinnati Bell maintains that the General Assembly has not

enacted the requisite enabling legislation, much less the definite standards necessary to

guide the Commission. Cincinnati Bell also opines that the only provision of Ohio law

which arguably enables the Commission to create local competition is Section 4905.24,

Revised Code (Cincinnati Bell supp. comments at 5). Cincinnati Bell also argues that it

has been denied due process in the certification cases heretofore conducted pursuant to

Section 4905.24, Revised Code, concerning Time Warner Communications of Ohio

(Time Warner) (Case No. 94-1695-TP-ACE), MCI Metro Access Transmission (Case No

94-2012-TP-ACE), and MFS Intelenet of Ohio, Inc. (Case No. 94-2019-TP-ACE).

We disagree with Cincinnati Bell's interpretation of our ability to promulgate

guidelines governing the establishment of local exchange competition, with its

suggestion that its due process rights have been violated in the aforementioned

certification cases, and with its inference that this generic docket is the appropriate

vehicle in which to raise concerns regarding the certification proceedings. Taking

Cincinnati Bell's due process arguments first we find these arguments to be without

merit.

In Application of Time Warner, Case No. 94-1695-TP-ACE (August 24, 1995), at

page 6, we addressed the legal issue of the Commission's authority to authorize Time

Warner to provide basic local exchange services in that proceeding, not in some future

generic docket. The Commission concluded in 94-1695 that "Time Warner has met its

burden of establishing that the granting of its authority is proper and necessary for the

public convenience, in that it has demonstrated that it is capable of providing service

such that it would promote competition consistent with the state's telecommunications

policy." Cincinnati Bell intervened and participated in 94-1695 and has appealed the

Commission's determination in that case to the Ohio Supreme Court. Therefore, we

find that, notwithstanding its argument to the contrary, Cincinnati Bell has been fully

afforded due process to argue the Commission's authority, under Section 4905.24,

Revised Code, to certify Time Warner to provide basic local exchange service in

Cincinnati Bell's operating territory.

Cincinnati Bell also argues that the Commission failed to cite and, nevertheless

does not have, the requisite statutory authority to permit local exchange competition in

Ohio. General Code Section 614-52, the precursor of Section 4905.24, Revised Code,

clearly enabled the Commission to authorize more than one telephone company to

provide telecommunications service in a given area and, by so doing, specifically

authorized local exchange competition within Ohio. Section 614-52, General Code, was

first adopted in 1911 and continues to this day virtually unchanged as Section 4905.24,

Revised Code. Section 4905.24, Revised Code, states, in relevant part:

[N]o telephone company shall exercise any permit, right, license, or franchise . . . for the furnishing of any telephone service. . . where there is in operation a telephone company furnishing adequate service, unless such telephone company first secures from the public utilities commission a certificate...

that the exercising of such license, permit, right, or franchise is

proper and necessary for the public convenience. (Emphasis

added).

Although there are no modern court cases interpreting Section 4905.24, Revised

Code, the Ohio Supreme Court, in a decision rendered in 1921, addressed both the

constitutionality of this statute as well as the authority granted the Commission by the

legislature under this statute. In confirming the authority of the Commission to certify

multiple providers of telephone service and, thereby, sanctioning competition for local

telephone service, the Ohio Supreme Court found in Celina, at 499:

It is important to notice that the section (614-52) does not prohibit another company from competing, but makes it a condition precedent to engaging in the business in the way of competition for that company to first apply for and receive a certificate from the Public Utilities Commission. The commission in the act is provided with all the facilities to investigate and determine whether the public convenience will be served, and in so doing must determine first whether the company is furnishing adequate service, and next, irrespective of whether it is or is not so doing, find whether or not the public convenience will be better served by granting the certificate to a competing company.

In discussing the constitutionality of Section 614-52, General Code, the Ohio

Supreme Court determined in Celina at 505, that:

Whether or not the principle of permitting or favoring a monopoly in the field in question is one sound in the political and economic view is one obviously for determination by the legislative branch of the government, and not by the judicial branch. In this state the legislature has made that determination in certain fields by various provisions in the public utilities act.

Therefore, as early as 1911, the Ohio General Assembly authorized this Commission to

determine whether or not local exchange competition is proper and necessary for the

public convenience. With the adoption of H. B. 563, the Ohio General Assembly

confirmed, through enactment of Section 4927.02, Revised Code, that the Commission

is to consider the policy of this state (which is stated on page 3 of this order) when

carrying out Sections 4927.03 and 4927.04, Revised Code.³ Section 4927.02, Revised Code,

clearly complements the Commission's authority to establish local exchange

competition. In fact, by its adoption, the Ohio General Assembly was instructing the

Commission to consider this policy in its deliberations concerning competitive markets.

Since the opening of this docket, Congress passed and the President signed the 1996 Act.

The Commission established an additional comment cycle to allow parties to address

the impact of the 1996 Act. The Commission is issuing these guidelines to implement

both the telecommunications policy of this state embodied in Section 4927.02, Revised

Code, and the 1996 Act. Most recently, the Ohio General Assembly by adoption of

Senate Bill 306, specifically affirmed the Commission's ability to implement the 1996

Act.4

Cincinnati Bell's constitutional arguments addressed in Appendix A, of its

December 14, 1995 comments, as well as its reliance upon Duryee and Canton Storage,

are equally flawed. Duryee addressed the issue of whether res judicata bars a

subsequent action challenging the constitutionality of a statute.5 The issue decided in

Duryee by the Franklin County Court of Appeals is not at issue in this proceeding.

Assuming arguendo, that the issue was the constitutionality of Section 4905.24, Revised

Code, as noted in Celina supra, the Ohio Supreme Court has already determined that

the involved statute is constitutional. The Commission in this proceeding is merely

establishing guidelines to implement the authority already conferred upon us by the

Ohio General Assembly. Thus, Duryee is inapplicable to this proceeding.

The Canton Storage case is also distinguishable from and, therefore, inapplicable

to the Commission's authority to promulgate guidelines to govern competition in the

telecommunications marketplace. In Canton Storage, the appellants challenged a

Commission decision to grant 22 contested applications to carry household goods

throughout the state of Ohio. In so doing, the Commission was exercising its

certification authority for motor transportation companies found in Section 4921.10,

Revised Code. The Ohio Supreme Court, in reversing the Commission, found that the

record did not support the Commission's determination of a public need for the service

and that, in the absence of specific legislation, the Commission was without the

statutory authority to promote competition in the motor transportation area. As we

have noted previously, the General Assembly has determined through specific

legislation that the Commission has the authority to certify multiple providers of local

telecommunications service. However, more importantly, the issue now before us does

not involve the certification of any particular provider to compete in the local market as

Canton Storage did. As noted earlier, the appropriate place to raise that challenge is in

an individual company certification proceeding which Cincinnati Bell has done in the

Time Warner case currently before the Ohio Supreme Court. This proceeding, on the

other hand, involves the establishment of guidelines by which local competition for

telecommunications service will unfold in Ohio.

As a final matter on this issue, it is interesting to note that Cincinnati Bell is the

only ILEC who argued that we lack the requisite legal authority to promulgate these

guidelines. Most commenting parties, including a number of ILECs, support the

Commission's moves to open the local exchange market to competition. For instance,

in their joint comments submitted in this matter, United Telephone Company of Ohio

and Sprint Communications Company L.P. (United/Sprint) stated that "[a]s a local

exchange company operating in Ohio, United has consistently declared its support for

the introduction of competition into the local exchange market" (United/Sprint, initial

comments at 1). Another example of ILEC support comes from Ameritech who

declared "Ameritech Ohio supports the creation of fully competitive markets for

communications services including the offering of competitive local exchange services"

(Ameritech initial comments at 1). Both United/Sprint and Ameritech are equally

impacted by any decision to authorize local exchange competition and yet neither argue

that we lack the requisite legal authority to do so.

B. Regulatory Guidelines versus Administrative Rules

Having determined that local exchange competition has been authorized by the

Ohio General Assembly, that the Commission has been empowered with the legislative

determination of when, if ever, to sanction competition, and having established the

constitutionality of this legislative grant of authority, we must now turn to the issue of

our authority to promulgate guidelines, in lieu of administrative

rules, to govern local

exchange competition. ALLTEL's argument that the Commission must promulgate

these procedures as formal additions to the O.A.C. in order for them to have any force

and effect.⁶ The Commission has, on numerous prior occasions without challenge,

adopted guidelines to effectuate competitive policies in lieu of promulgating O.A.C.

rules. By so doing, the Commission has relaxed and streamlined regulatory obligations

which have benefitted all telephone companies. Examples of such cases include 944,

1144, 563, 564, and 1149. Ameritech and ALLTEL availed themselves of the regulatory

guidelines promulgated in several of the aforementioned proceedings at one time or

another. Those same parties should not now be heard to complain that this lawful

regulatory mechanism in some manner violates their interests in this proceeding.

Having thoroughly considered the comments on this matter, the Commission

determines that the most appropriate manner in which to proceed is to adopt these local

competition procedures as guidelines as opposed to O.A.C. rules. By treating these as

guidelines, we are enabling the Commission to maintain flexibility to make

modifications, if found necessary, without having to await the more cumbersome

process associated with formal changes to the O.A.C. We find their arguments to the

contrary to be shortsighted and potentially inconsistent with the interests of telephone

companies.

On this issue, it is instructive to review the Commission's enabling statute,

Section 4901.02, Revised Code, which states:

The Commission shall possess the powers and duties specified in, as well as all powers necessary and proper to carry out the purposes of Chapters 4901., 4903., 4905., 4907., 4909., 4921., and 4923. of the Revised Code.

In addition, the Commission is provided ample discretion by other sections of

Title 49 of the Ohio Revised Code, such as Section 4905.04, Revised Code, which vests

the Commission "with power and jurisdiction to supervise and regulate public

utilities," and Section 4905.06, Revised Code, which delegates to the Commission

"general supervision over all public utilities within its jurisdiction." Other statutes

throughout Title 49 similarly grant to the Commission a large measure of discretion in

determining "just and reasonable rates" (Section 4909.15, Revised Code); "adequacy of

service" (Section 4905.22, Revised Code); and the "justness" and reasonableness of

telephone company rules, regulations, and practices" (Section 4905.381, Revised Code).

The General Assembly, in adopting H.B. 563, also directly authorized the Commission

to adopt the standards necessary to carry out those provisions.⁷ This broad statutory

language, coupled with the underlying objective of regulating in the public interest and

taking into account the policy of this state as set forth in Section 4927.02, Revised Code,

leads this Commission to determine that broad latitude is necessary to adapt regulatory

policy to the changing circumstances within Ohio's telecommunications environment.

The Commission also has an independent basis for promulgating guidelines to

govern local exchange competition in Ohio. As noted above, the Ohio General

Assembly, through adoption of Section 4905.24, Revised Code, the constitutionality of

which was established in Celina, delegated to this Commission the determination of

when and under what circumstances, if ever, to sanction competition in the local

exchange market. Through the promulgation of these guidelines, the Commission is

merely exercising the authority granted us in Section 4901.13, Revised Code, to adopt

and publish rules governing proceedings and to regulate the mode and the manner of

valuations, tests, audits, inspections, investigations, and hearings relating to local

exchange competition in Ohio. The delegation of legislative authority to the

Commission by the General Assembly has long been upheld as constitutional by the

Ohio Supreme Court. For instance, in *Matz v. J. L. Curtis Cartage, Co.*, 132 Ohio St. 271

(1937), the court determined that, as a general rule, the Ohio General Assembly cannot

delegate legislative authority to an administrative board. The

court went on to find,
however, that:

when the discretion to be exercised relates to a police regulation for the protection of the public morals, health, safety, or general welfare, and it is impossible or impracticable to provide such standards, and to do so would defeat the legislative object sought to be accomplished, legislation conferring such discretion may be valid and constitutional without such restrictions and limitations.

The guidelines we are adopting today clearly meet the standards set forth by the Ohio Supreme Court to justify a constitutional delegation of legislative authority to this Commission. First, without a doubt the local competition guidelines are designed to protect the general welfare of all Ohioans. Next, due to the technical nature of the issues involved, it is reasonable for the General Assembly to have declined to enact such detailed pricing formulas, which, by virtue of their being embodied in statute, would restrict Ohio's ability to move forward with and respond to the changing telecommunications environment and thus frustrate the General Assembly's policy set forth in Section 4927 02, Revised Code. Thus, in this instance, the court's test for determining if a proper delegation of legislative authority has been met.

C. Regulatory Symmetry

Another issue raised by many of the commenters was the issue of regulatory

symmetry or parity. On the one hand, ILECs claim that the staff's proposal establishes

asymmetrical regulations which favor the NECs over the ILECs.⁸ The ILECs argue,

therefore, that staff's proposal creates an unlawful and discriminatory preference for

NECs to the detriment of ILECs. The Ohio Telephone Association (OTA) claims that the

authority reserved to the states through Section 253(b) of the 1996 Act mandates parity

and symmetry in any local competition guidelines this Commission ultimately adopts

(OTA supp. comments at 1-2). Ameritech asserts that the Commission was faced with a

similar decision regarding AT&T Communications of Ohio, Inc. (AT&T) at the advent

of long distance competition and that this Commission, at that time, rightfully rejected

the concept of asymmetrical regulation (Ameritech initial comments at 6). Ameritech

also claims that missing from the staff's proposal is a thorough analysis and

understanding of the impact of the rules on consumers and the overall public interest

as required by Ohio policy. ALLTEL posits that the Commission should conduct a

comprehensive review of the existing telecommunications rules and eliminate all

current rules deemed unnecessary to protect the public interest. Thereafter, all LECs

should be subject to these relaxed rules (ALLTEL reply comments at 37).