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VIA OVERNIGHT DELIVERY
Office of the Secretary
Magalie Roman Salas
Federal Communications Commission
445 Twelfth Street, S.W.
Room TW-A325
Washington, DC 20554

98-1411

Re: *Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, et al..

Dear Ms. Salas:

Enclosed, please find the original and six copies of the Comments of the Public Utilities Commission of Ohio in the above captioned matter. Please note that only the original contains the voluminous attachments referred to in the comments. These comments will also be submitted electronically through ECFS and the voluminous attachments will be submitted electronically as well.

Please return one stamped copy in the enclosed self-addressed stamped envelope. Thank you for your assistance in this matter.

Respectfully submitted,

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	)	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling.	)	CC Docket Nos. 98-147, 96-98, 98-141

COMMENTS OF THE
PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION AND DISCUSSION

On December 7, 2001, the Federal Communications Commission (FCC) released a Notice of Proposed Rulemaking (NPRM) in the above captioned proceedings. Among other things, the FCC's NPRM invites input from interested persons regarding its proposal to establish 12 national metrics for the incumbent local exchange carriers' (ILECs') provision of unbundled network elements (UNEs) and interconnection services to competitive local exchange carriers (CLECs). The 12 proposed metrics would measure an ILEC's ability to furnish the following services to competitive carriers: pre-ordering, ordering, provisioning, repair, and maintenance.

The Public Utilities Commission of Ohio (Ohio commission) hereby submits its response to the FCC's invitation for public input. Initial comments are due at the FCC on or before January 22, 2002.

DISCUSSION

Regulatory Framework for OSS Performance Standards [NPRM at ¶¶14-20]

The Ohio commission generally advocates the following alternative positions in this docket: (1) the FCC should continue to offer model performance standards for optional use by State commissions that have not yet expended the considerable time and resources required to develop standards, (2) alternatively, if the FCC does adopt mandatory standards that are binding in all states, the FCC standards should remain sufficiently broad-based and generic so that State commissions would have the flexibility and discretion to apply more specific and/or more stringent standards, and (3) alternatively, if the FCC does adopt a more detailed and comprehensive set of binding national standards, it should consider adopting the standards like the ones being used in Ohio. Regarding enforcement of the FCC standards (if adopted), any remedy process imposed by the FCC should fully preserve the ability of State commissions to arbitrate interconnection agreements and resolve disputes arising under Section 251 and 252 of the 1996 Act.

The Ohio commission recognizes the FCC may have an interest in ensuring some degree of uniformity for the performance measurements and standards applicable to ILECs nationwide. However, in pursuing that goal, the substantial progress of State commissions should not be cast aside or sacrificed. During the 1998 NPRM in this docket, the FCC undertook to adopt model performance measures and reporting

requirements that were "not legally binding" on States. Notice of Proposed Rulemaking, ¶ 4. In forging that approach, the FCC sought to "maximize state flexibility, by allowing those states that have begun the process of developing performance measurements and reporting requirements to continue their work and incorporate the model rules to the extent they deem appropriate, while providing a comprehensive set of measurements that can be adopted by those states that have to begin the process." *Id.* at ¶ 23.

In the 1998 NPRM, the FCC affirmatively praised the States that had undertaken to develop performance measurements and reporting requirements and strongly encouraged States that had not done so to continue progress toward that end. More to the point, the FCC strongly encouraged States to develop more detailed performance standards and the FCC promised that it would not disturb progress made by States:

> We intend to work with state commissions in developing model performance measurements and reporting requirements. We applaud the efforts states have undertaken this far to develop performance measurements and reporting requirements and *strongly encourage* states to continue this work. It is not our intent in this proceeding to undermine the work states have done in this area, but rather to build upon it and inform it, where necessary and helpful.

1998 NPRM at ¶ 26 (emphasis added). In the 1998 NPRM, the FCC also indicated that the eventual adoption of national rules may "prove to be unnecessary in light of the states' and carriers' application of the model performance measurements and reporting requirements that we intend to adopt in the first instance." *Id.* at ¶ 4. Thus, the 1998 NPRM established a foundation for this docket based on complementary and cooperative federal-state partnership.[1]

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[1] Given the deliberate and clear desire of the 1998 NPRM to avoid any jurisdictional conflict with State commissions, the PUCO in its comments refrained from addressing the jurisdictional arguments while expressly reserving the right to do so in the future to the extent that becomes necessary. Ohio

In approving the SBC-Ameritech merger and the Bell Atlantic-GTE merger, the FCC adopted certain performance measures relating to OSS. In that context, the FCC also recognized that State commissions may always adopt more specific or more stringent standards even where the FCC adopts OSS performance standards. *See eg. In the Matter of the Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to provide In-Region, InterLATA Service in the State of New York,* 1999 WL 1243135, 15 F.C.C.R. 3953, 15 FCC Rcd. 3953, 19 Communications Reg. (P&F) 1 (F.C.C., Dec 22, 1999) (NO. CC 99-295, FCC 99-404) at ¶ 55 (note 107). Thus, the FCC has already established a sound policy and practice of ensuring that any Federal guidelines or standards concerning OSS performance will be promulgated and administered in a fashion that preserves both past and future work done by State commissions.

Since the 1998 NPRM, the Ohio commission has diligently worked to establish OSS performance standards for Ameritech and GTE in Ohio (those standards are attached to these comments and are further discussed below). After *strongly encouraging* the States to follow this path, the FCC should avoid transforming it into a dead-end for the States that have accepted the FCC's invitation and have expended considerable time and resources to develop performance measurements and reporting requirements. Instead, the FCC should honor its prior statements, recognize the role of State commissions in this process and continue to foster a productive federal-state partnership in this area.

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comments at 3 (note 1). Likewise, in response to the current NPRM, the PUCO would like nothing better than to avoid a jurisdictional conflict. But the PUCO will continue to pursue its independent interest in promoting local telephone competition and discharging its duties under the 1996 Act.

In its effort to promote competition and build upon the progress made to date, the FCC should diligently ensure that the progress made by States to date is not set back. Consistent with its previous efforts to "strongly encourage" States to undertake the work, the FCC should now fulfill its pledge not to undermine the hard-earned results of State commissions in this area. Indeed, the 2001 NPRM indicates that the FCC is looking for suggestions "as to how the Commission might best work with the states in developing and applying national performance measurements, and how the Commission and the states can coordinate enforcement so as to advance the mutual interest of the federal and state governments in implementing the Act." 2001 NPRM at ¶ 4. Similarly, the current NPRM pledges that "we do not intend for our own regulations to interfere unduly with these markets as competition develops or with corresponding state policies." *Id.* at ¶ 7.

As a practical matter, the shared goal of the FCC and State commissions in advancing local telephone competition will only be achieved through the combined efforts of the FCC and State commissions. Neither the federal nor the state government can do it alone —only through a cooperative approach and complimentary regulatory policies will competitive local telephone markets be realized. The Ohio commission wishes to continue to foster this cooperative approach and to avoid any undue jurisdictional conflict as between the FCC and State commissions.

The Ohio commission trusts and expects that the FCC will continue to ensure that the extensive and tedious work done by State commissions will not be obliterated or disturbed, but will instead be incorporated and preserved. As further discussed below, the OSS performance standards being used in Ohio are consistent with the standards being proposed by the FCC in the current NPRM —the Ohio standards are more extensive and detailed, resulting from the extensive time and effort expended by

not only the Ohio commission but also the industry. In any case, the FCC should continue to ensure that its desire to more uniformly achieve progress in this area does not sacrifice the substantial progress already made in States like Ohio.

Discussion of Remedies [NPRM at ¶¶21-22]

The NPRM asks whether the FCC should establish federal enforcement mechanisms, impose monetary forfeitures, or create self-executing penalties. NPRM at ¶ 21-22. As a threshold matter, it is assumed that the FCC would only adopt remedies if it decides (against the Ohio commission's recommendation) to adopt binding nationwide OSS performance standards. If national standards are adopted, the Ohio commission recommends that enforcement matters generally be left to State commissions. Certainly, the FCC would consider performance in the context of Section 271 applications, for those ILECs that would file after such time as the national standards are promulgated. Moreover, there could be some other unusual context where the FCC may need to directly impose forfeitures or some other penalty to redress a particular situation. At a minimum, however, the FCC should ensure that any federal remedies adopted would not restrict or displace remedies imposed by State commissions. *See e.g.* (Ameritech/SBC merger order), Appendix C (Merger Conditions) at 1, FCC's performance standards and remedies do not supersede or limit state authority to supplement FCC rules.).

Enforcement issues require the application of abstract standards to an actual situation and often involve layers of issues including disputes about facts concerning the actual performance of the ILEC, disputes concerning the accuracy of reporting, arguments addressing the appropriateness of a particular remedy and other mitigating or aggravating circumstances. Thus, enforcement proceedings generally involve both application of standards and imposition of consequences for violations. It is difficult to

separate the application of rules from the imposition of consequences for violation of those rules.

Although the FCC may have some legal authority to promulgate standards relative to OSS performance, the responsibility to apply those standards (as well as the applicable statutory standards) in an actual interconnection case rests with the State commissions. Through the Telecommunications Act of 1996, Congress imposed the duty to arbitrate and resolve the terms and conditions of interconnection upon State commissions; only if a State commission "fails to carry out *its responsibility*" under Section 252 is the FCC authorized to step in and act. 47 U.S.C. § 252(e)(5) (West 2002). The Supreme Court has held that the 1996 Act gives the FCC jurisdiction to promulgate federal rules necessary to implement the provisions of the Act. *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. at 385. However, the jurisdiction to apply the standards in interconnection cases lies with the State commission.

As the Supreme Court stated relative to TELRIC pricing:

> The FCC's prescription, through rulemaking, of a requisite pricing methodology no more prevents the States from establishing rates than do the statutory "Pricing standards" set forth in § 252(d). *It is the States that will apply those standards and implement that methodology, determining the concrete result in particular circumstances.*

Id. at 384 (emphasis added). Thus, the Supreme Court has recognized that Congress entrusted to State commissions the task of applying the applicable statutory standards and FCC regulations in actual cases. This line of reasoning supports the conclusion that the FCC must be very careful in creating any federal remedial scheme or self-executing remedies to enforce national standards that may be adopted, so that the proper role of State commissions is not disturbed. States are adequately equipped to apply and enforce such standards in discharging their duties under Section 252 of the 1996 Act.

The FCC did create self-executing remedies for the OSS performance standards adopted in the Bell Atlantic-GTE and SBC-Ameritech merger cases. But those were voluntary and were merely imposed as a condition for those two mergers; they were not unilaterally imposed in a contested case using the FCC's statutory authority. Moreover, those standards were not adopted for the sake of national uniformity and were not promulgated under the FCC's Section 251 rulemaking authority. If the FCC were to create a broader and more comprehensive remedial scheme for the industry, in the current proceeding it could potentially displace the efforts of State commissions in discharging their duties to arbitrate and resolve interconnection matters. ILECs would predictably argue that the FCC's generic remedial scheme would displace that of the State commissions. The State commission's ability to effectively decide and resolve specific disputes relating to OSS performance could possibly be handicapped.

The FCC should avoid adopting any remedial scheme that would directly or indirectly limit the ability of State commissions to authoritatively arbitrate and resolve interconnection issues including the critical issue of provisioning OSS. If any generic remedy process is adopted relative to the broad-based standards discussed in the NPRM, the FCC, at a minimum, should make unequivocally clear that any federal remedies do not displace State remedies for the more specific set of standards adopted in a particular State. The FCC and State commissions share the mutual interest in advancing local telephone competition and the FCC should ensure that it does not restrict the ability of State commissions to independently apply and enforce the FCC's OSS performance standards.

Joint Task Force [NPRM at ¶ 20]

The FCC requests comments on whether it should establish a joint federal-state task force that could develop and implement directives that may result from this

proceeding. NPRM at ¶ 20. The Ohio commission maintains that if the FCC does proceed to adopt Federal performance standards, establishing a Federal-State joint task force (task force) would be appropriate to enhance federal-state coordination and minimize conflicts and inconsistencies. The task force should be responsible for holding workshops (or collaboratives) among the various industry stakeholders and consumer groups to update performance measurement calculations, benchmarks, and corresponding remedies. The Ohio commission has found that the implementation of UNE and interconnection standards and corresponding enforcement mechanisms is an ongoing dynamic process, which requires the participation among state commission staff, consumer groups and the local exchange industry (both ILEC and CLEC). The Ohio commission has held many industry collaborative meetings to determine whether performance standards should be eliminated, modified, disaggregated, or augmented. This collaborative process in Ohio is ongoing. The Ohio commission recommends that the FCC establish a joint task force that would be responsible for fine-tuning and updating the standards as necessary based on input collected during the collaborative process.

Scope of Required Reporting [NPRM at ¶ 24]

The FCC requests comments on those carriers that should be required to report interconnection and UNE performance measurements. In particular, the FCC requests comment regarding whether national measurements, standards and reporting requirements are justified for all carriers. NPRM at ¶ 24. The Ohio commission submits that any ILEC that has been provided a *bona fide* request for interconnection from a competing local carrier should be require to comport with the federal reporting requirements established in this proceeding. Such reporting would need to be flexible enough to be tailored to the individual operating parameters of rural and two percent

carriers to take into consideration any section 251(f) waivers or exemptions allowed by individual State commissions. For example, if a small rural carrier were not required by a State commission to provide OSS, it would be illogical to require such company to report any OSS-related performance measurements. Such adjustments to the reporting requirements for smaller exempt ILECs should be determined by the individual State commissions consistent with any exemptions granted a rural carrier by that State commission. The Ohio commission notes that this situation further illustrates why states with performance measurements are best suited for determining relevant performance standards for ILECs located within their respective state boundaries.

General Issues [NPRM at ¶¶ 25 –34]

The FCC seeks comments on the reasonableness of national performance measurement standards and the impact such measures would have on carriers and state and federal regulators. NPRM at ¶ 26. First, each ILEC service territory and state has its own particular nuances that are best addressed by either RBOC region or state specific performance measurements instead of national standards. For example, Ohio performance measures for Ameritech and Verizon North (Attachments A and B, respectively) were each jointly developed in a separate collaborative setting by CLECs, ILECs, and state regulators. The Ohio measures were carefully promulgated and tremendous amount of time and resources were used to develop them. Additionally, for Ameritech's OSS, there is a "built in" 6-month collaborative review process by which Ameritech, CLECs, and State commissions can propose additions, deletions, or modifications of performance measurements. This collaborative provides a meaningful forum for all of the parties to address each others concerns and advocate their own positions relative to performance measurements.

Standing alone and without further supplementation by State commissions, the FCC's proposed national performance measurements are general and may not yield performance measurement results that can be meaningfully used to troubleshoot or improve an ILEC's internal processes, or to assure CLECs and State commissions that an ILEC is not discriminating against unaffiliated CLECs. If the FCC does consider adopting a more detailed and comprehensive set of standards, the Ohio commission recommends that any such standards only be used as a set of suggested guidelines for State commissions that have not yet developed OSS performance measures. Should the FCC decide to adopt a single set of detailed and binding federal performance standards for uniform use by ILECs (against the Ohio commission's recommendation), the Ohio commission offers suggestions below regarding the formulation of such a comprehensive set of measurements, based on Ohio's substantial experience in this area. But the suggestions offered below should not be interpreted to diminish the Ohio commission's primary position that federal standards be optional and, if adopted, should remain general and broad-based so that State commissions would have the flexibility and discretion to supplement the federal standards with more specific standards.

In response to the FCC's request for comments in regard to billing performance measures (NPRM at ¶ 28), the Ohio commission contends that billing, while difficult to broadly address in this proceeding, is an essential OSS function which warrants monitoring via performance measures. Billing performance needs to be measured because of the very real effect the accuracy and timeliness of carrier-to-carrier billing can have on both ILECs' and CLECs' financial results, as well as the integrity of local communications markets. Accordingly, the benefits of monitoring billing performance currently outweigh the costs. A comprehensive set of OSS measurements would

consider billing on the same level as the other four primary OSS functions have been considered. For an example of billing performance measurements implemented in Ohio, please see Measurements 14-20 in the attached Ameritech Performance Measurement User Guide (Ameritech User Guide).[2]

Pre-order Measurements [NPRM at ¶¶ 35 – 36]

The FCC seeks comments on its proposed OSS Pre-Order Interface Response Timeliness performance measurement. NPRM at ¶¶ 35 to 36. The Ameritech User Guide contains a similar measurement: 2 Percent Responses Received Within "X" Seconds - OSS Interfaces. This performance measurement has numerous levels of disaggregation for the different pre-ordering functions, as well as different benchmarks for each level of disaggregation by type of pre-ordering interface.[3]

In response to the FCC's requests for input concerning pre-ordering measurements, the Ohio commission calls to the FCC's attention the following additional pre-ordering performance measures in the Ameritech User Guide:

1.1 Average Response Time for Manual Loop Makeup Information

1.2 Accuracy of Actual Loop Makeup Information Provided for DSL Orders

The Ohio commission notes that these measurements provide data on response times, as well as on the accuracy of the data that are returned for pre-order loop makeup transactions needed for the ordering of xDSL loops.

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2 The performance measurement guidelines being used by Ameritech Ohio and Verizon North in Ohio are attached to these comments. For the purposes of discussion, the Ohio commission will only reference the Ameritech performance measurement guide.

3 Performance measurements in the Ameritech User Guide also contain definitions, exclusions, business rules, how the measures are calculated, report structures, and measurement types for all of the performance measurements.

Order Status Measurements [NPRM at ¶¶ 37-45]

The FCC requests comment on whether its three performance measurements for ordering are sufficient. A comprehensive set of OSS performance measurements would include consideration of additional performance measurements similar to those in the Ameritech User Guide. Specifically for ordering, the Ameritech User Guide contains the following seventeen performance measurements:

5.0 Percent Firm Order Confirmations (FOCs) Returned Within "X" Hours

5.2 Percentage of Unsolicited FOCs by Reason Code

6.0 Average Time to Return FOC

7.0 Percent Mechanized Completions Returned Within One Hour of Completion in Ordering Systems

7.1 Percent Mechanized Completions Returned Within One Day of Work Completion

8.0 Average Time to Return Mechanized Completions

9.0 Percent Rejects

10.0 Percent Mechanized Rejects Returned Within One Hour of Receipt of Reject in MOR.

10.1 Percent Mechanized Rejects Returned within One Hour of Receipt or Order.

10.2 Percent Manual Rejects Received Electronically and Returned Within Five Hours.

10.3 Percent Manual Rejects Received Manually and Returned Within Five Hours.

10.4 Percentage of Orders Given Jeopardy Notices.

11.0 Mean Time to Return Mechanized Rejects.

11.1 Mean Time to Return Manual Rejects Received via Electronic Interface.

11.2 Mean Time to Return Manual Rejects Received via Manual Process.

13.0 Order Process Percent Flow Through.

13.1 Total Order Process Percent Flow Through.

Provisioning Measurements [NPRM ¶¶ 46-64]

The FCC asks if its proposed provisioning measurements could be used to sufficiently determine carriers' statutory compliance and nondiscrimination, without increasing carriers' regulatory burdens. NPRM at ¶¶ 46-64. The Ohio commission contends that while these provisioning measurements are a good base from which to start, a comprehensive set of standards would contain several other measures and to provide further levels of disaggregation. Additionally, it might be efficient and meaningful to apply these measures by product group (*i.e.*, resale POTS and UNE-P, resale "specials", UNEs, interconnection trunks, LNP, etc.). For example, Ameritech Performance Measurement No. 28 (Percent Resale POTS/UNE-P Installations Completed Within the Customer Requested Due Date) illustrates that it is efficient to disaggregate measurements by product group because of its long list of exclusions, complex business rules, numerous levels of disaggregation and benchmarks.

The following are examples of more provisioning measures for resale POTS/UNE-P in the Ameritech User Guide:

29.0 Percent Ameritech Caused Missed Due Dates

30.0 Percent Ameritech Missed Due Dates Due to Lack of Facilities

31.0 Average Delay Days for Missed Due Dates Due to Lack of Facilities

32.0 Average Delay Days for Ameritech Caused Missed Due Dates

35.0 Percent Trouble Reports Within 30 Days of Installation

Maintenance and Repair Measurements [NPRM at ¶¶ 65-72]

The FCC seeks comments on the adequacy of its proposed maintenance and repair performance measurements. NPRM at ¶¶ 65-72. The Ohio commission maintains that, while these maintenance and repair measurements are a good starting point, a comprehensive set of measurements would contain several other measures and to provide further levels of disaggregation. While the maintenance and repair performance measurements in the Ameritech User Guide are generally less intricate than those for provisioning, they still contain a modest number of exclusions and levels of disaggregation. The following are examples of maintenance and repair measurements for resale POTS/UNE-P in the AIT Ohio User Guide:

37.1 Trouble Report Rate Net of Installation and Repeat Reports

38.0 Percent Missed Repair Commitments

39.0 Receipt to (Trouble) Clear Duration

40.0 Percent Out of Service < 24 Hours

41.0 Percent Repeat Reports

42.0 Percent of Trouble Reports with No Access

Data Validation and Audits [NPRM at ¶ 73]

The FCC seeks comment regarding data validation and audit procedures. The FCC underscores the importance to the reliability of all data gathered and stored in connection with national performance standards. NPRM at ¶ 73. The Ohio commission notes that the OSS performance measurement reports must be accurate. These reports are generally used to determine whether an ILEC is discriminating against its competitors in the local market. It is, therefore, essential that all source data used in the computation of the performance measures be validated by an independent auditor. It is

also essential that the computations of the performance measures be independently replicated using the agreed-upon business rules and procedures.

In Ohio, two models were used for conducting independent audits as follows:

(1) The GTE-North OSS audit included a review of the processes and procedures that are used within the company's Operations Support Systems, a review of all data flows and data sources, and a replication of all performance measures to ensure that all agreed-upon business rules were followed in the computations of these measures. The GTE OSS collaborative, which included representatives from the CLEC community, GTE North, consumer groups, and the Ohio commission Staff selected the independent auditor.

(2) The Ameritech-Ohio, third-party test is currently underway. This test includes an audit of the processes and procedures that are used within the company's Operations Support Systems, a review of all data flows and data sources, a replication of all performance measures, and a test of "real transactions" to assess the reliability and integrity of the Operations Support Systems of Ameritech-Ohio. The Ameritech-Ohio OSS collaborative, which included representatives from the CLEC community, Ameritech, consumer groups, and the Ohio commission Staff recommended to the Ohio commission its preference for the selection of the independent third-party test manager/auditor. The collaborative's recommendation was adopted by the Ohio commission.

The Ohio commission believes that OSS audits of processes and procedures, data sources, and performance measures should be performed periodically so long as an ILEC continues to control the lion's share of the local market in its service area. As to the frequency of such audits, it should be left to the states. This generally depends on

several factors such as how often are the performance measures reviewed and modified by the OSS collaborative, State commission orders, complaint cases, etc.

Periodic Review and Sunset Provisions [NPRM at ¶ 77]

The FCC requests comments on a potential sunset date for the proposed metrics. NPRM at ¶ 77. Additionally, parties are invited to comment on how the FCC should ensure that, over time, standards keep pace with industry needs and developments, address changes in incumbent anti-competitive behavior, and that performance and reporting requirements remain minimally burdensome. NPRM at ¶ 77. The Ohio commission submits that the proposed metrics (if adopted) should remain in place until the joint task force determines, through the collaborative process, that the specific requirements are no longer necessary. After such demonstration has been made, the joint task force should then determine through the collaborative process the specific requirements that are no longer necessary. Additionally, as mentioned earlier, the Ohio commission maintains that the collaborative process is an effective mechanism for the fine-tuning of performance measurements.

CONCLUSION

The Ohio commission wishes to thank the FCC for the opportunity to comment in this proceeding and respectfully requests that the FCC adopt the recommendations outlined above.

Respectfully submitted,

On Behalf of the Public Utilities Commission of Ohio

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DOCUMENT AVAILABLE
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SEE DOCKET NO. 98-56 FOR THE DOCUMENT.