

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Pay Telephone	)	
Reclassification and Compensation Provisions	)	
of the Telecommunications Act of 1996	)	
	)	
Petition of the Payphone Association of Ohio to	)	CC Docket No. 96-128
Preempt the Actions of the State of Ohio Refusing to	)	
Implement the FCC's Payphone Orders, Including	)	
the Refund of Overcharges to Payphone Providers in	)	
Ohio, and for a Declaratory Ruling	)	
	)	

**MOTION OF AT&T INC. AND THE VERIZON TELEPHONE COMPANIES  
TO ACCEPT LATE-FILED COMMENTS ON PAYPHONE ASSOCIATION  
OF OHIO'S PETITION FOR A DECLARATORY RULING**

AT&T Inc. and the Verizon Telephone Companies respectfully seek leave to file the attached Comments on the Petition for a Declaratory Ruling filed by the Payphone Association of Ohio, which were inadvertently not filed on the February 1 due date for direct comments.

There is good cause for the Commission to grant leave to ensure that the record is complete. Movants submit that there will be no prejudice to the Payphone Association of Ohio, whose petition raises the same refund issue that has already been raised by four previous petitioners in this Docket (the Independent Payphone Association of New York, the Southern Public Communication Association, the Illinois Public Telecommunications Association, and the Florida Public Telecommunications Association). The arguments elaborated in the attached comments have already been made in response to one or more of those previous petitions, and should therefore be familiar to the Payphone Association of Ohio. In addition, by including

these comments in the docket now, the Commission will provide the Payphone Association of Ohio an opportunity to respond to these comments in its reply comment.

We have provided a copy of this motion and the attached comments to Counsel for the Payphone Association of Ohio by facsimile and overnight mail.

Respectfully submitted,

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February 5, 2007

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**COMMENTS OF AT&T INC.  
AND THE VERIZON TELEPHONE COMPANIES  
ON PAYPHONE ASSOCIATION OF OHIO'S  
PETITION FOR A DECLARATORY RULING**

**INTRODUCTION AND SUMMARY**

The Commission should dismiss or deny the Petition for Declaratory Ruling filed by the Payphone Association of Ohio ("PAO") and need not address the merits of PAO's arguments.

I. PAO's petition challenges the refusal by the Public Utilities Commission of Ohio ("PUCO" or "Ohio commission") to grant refunds for state payphone line rates. *See* PAO Pet. at 4-6. But as PAO's petition itself concedes, the Ohio Supreme Court's decision affirming the PUCO's determination is now "final." *Id.* at 6. As we have pointed out in connection with previous petition, that final decision is therefore both unappealable and deserving of res judicata effect. The Commission cannot "arrogate to itself the power to (a) review or (b) ignore the judgments of the courts." *Town of Deerfield v. FCC*, 992 F.2d 420, 430 (2d Cir. 1993). Even if PAO had otherwise properly invoked this Commission's declaratory ruling authority (it has not),

and even if PAO's arguments had merit (they do not), its petition would still constitute an impermissible collateral attack on a binding judgment and must be denied for that reason alone.

**II.** The rest of PAO's arguments have been amply addressed elsewhere. First, PAO's petition is not an appropriate vehicle for this Commission to issue a declaratory ruling. Second, a retroactive refund of the sort demanded by PAO would violate state and federal filed rate doctrines and bars on retroactive ratemaking. Third, letters sent in early 1997 to the FCC and the Ohio commission did not, contrary to PAO's contention, require retroactive refunds for an indefinite period in the future. Fourth, nothing in the Commission's jurisprudence requires state commissions to issue retroactive refunds.

**III.** The Commission should deny PAO's petition insofar as it challenges AT&T's eligibility for dial-around compensation. PAO has no standing to present this claim, and PAO's argument is without merit in any event.

## **BACKGROUND**

**A.** Following the release of the *Payphone Orders* in 1996, PUCO initiated a proceeding to implement those orders. See Opinion and Order, *Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, 2004 Ohio PUC LEXIS 363, at \*3-\*4 (Ohio PUC Sept. 1, 2004) ("Ohio Order"). PUCO approved the tariff of SBC Ohio (then Ameritech) on September 25, 1997, *id.* at \*4, and found "that the tariff filings were consistent with the Act, the FCC's decisions in CC Docket No. 96-128, and the Commission's May 22, 1997 entry in this proceeding." *Id.* at \*6.

Various motions and discovery (not relevant here) occurred over the next few years. The proceeding finally came to a head in PUCO's Sept. 1, 2004 order (of which PAO complains). In

that order, PUCO held that in light of the clarifications of the *Wisconsin Order*,<sup>1</sup> SBC Ohio's overhead loading factors were likely too high. *Id.* at \*66-\*71. That is, SBC Ohio had not entirely met its "burden of presenting forward-looking, cost-based rates for payphone services," *id.* at \*64-\*65, in part because SBC Ohio had failed to demonstrate that various factors were reasonable in light of a "comparable competitive service." *Id.* at \*69-\*70. In addition, SBC Ohio had inaccurately accounted for call duration, *id.* at \*71-\*72. PUCO ordered SBC Ohio both to file revised tariffs, and to issue a true-up back to "January 16, 2003," which is the date on which PUCO had "issued an entry on rehearing setting forth interim rates subject to true-up." *Id.* at \*73-\*74.

As for the issue of further refunds, however, PUCO noted that PAO had "raised the issue of refunds on several occasions," but "[o]n each occasion, [PUCO] stated that refunds are beyond the scope of this proceeding and, in any event, would be tantamount to unlawful retroactive ratemaking." *Id.* at \*11-\*12.

**B.** On reconsideration, PAO tried to raise the refund issue once again. *See* Entry on Rehearing, *Commission's Investigation into the Implementation of Section 276 of the Telecommunications Act of 1996 Regarding Pay Telephone Services*, Case No. 96-1310-TP-COI, 2004 Ohio PUC LEXIS 475 (Ohio PUC Oct. 27, 2004) ("Ohio Reconsideration Order"). PUCO again took note of the fact that "PAO has raised the issue of refunds eight times over the course of this proceeding," *id.* at \*25, and found that PAO's refund claim raised "no new issues, facts, or questions of law that the Commission has not previously considered," *id.* at \*29. PAO also attempted to rely on the three letters that it now attaches as Exhibits One through Three of its

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<sup>1</sup> Memorandum Opinion and Order, *Wisconsin Public Service Commission; Order Directing Filings*, 17 FCC Rcd 2051 (2002) ("*Wisconsin Order*"), *aff'd sub nom. New England Pub. Communications Council, Inc. v. FCC*, 334 F.3d 69 (D.C. Cir. 2003), *cert. denied*, 541 U.S. 1009 (2004).

Petition (*i.e.*, supposedly promising to provide refunds back to April 15, 1997), but the PUCO held that these letters had either been “previously stricken” from the record or had not been “previously proffered and subjected to review.” *Id.*

C. PAO then appealed the decision to the Ohio Supreme Court. *See Payphone Ass’n of Ohio v. Public Util. Comm’n of Ohio*, 849 N.E.2d 4 (Ohio 2006) (“Ohio Supreme Court Decision”). PAO first argued that SBC had not “ever fil[ed] a tariff that complied with the NST.” *Id.* at 8. The Ohio Supreme Court held, however, that a “new filing was unnecessary,” and that PUCO specifically had “found that SBC Ohio’s pay-phone tariffs that were in effect in 1997 satisfied the requirements of Section 276 and the FCC’s orders.” *Id.* at 8-9. Thus, “[b]ecause the PUCO had already reviewed SBC Ohio’s tariffs and found them to be consistent with the 1996 Act, no further pay-phone-tariff filings needed to be made at that time.” *Id.* at 9.

Second, PAO claimed that “the PUCO determined in January 2004 that SBC Ohio’s existing pay-phone-tariff rate had to be reduced because it failed to meet the reasonableness standard of the NST, the PUCO was required to expressly find that the pay-phone tariff in effect in 1997 violated the FCC pricing standard and its own standard and was inconsistent with the 1996 Act.” *Id.* The Ohio Supreme Court found, however, that PUCO had properly “refused to address the issue of refunds for any period before the interim tariff rates were approved in 2003, finding that the issue had been previously considered in the proceedings and that PAO had not presented any new facts or questions of law,” and that this decision was not “manifestly against the weight of the evidence.” *Id.*

Third, PAO claimed that PUCO should have considered three letters that “were addressed to staff members of the FCC or PUCO and bore dates between April 10 and May 16, 1997,” *i.e.*, the same letters that PAO attaches as Exhibits One through Three to its Petition. *Id.* at 10. The

Ohio Supreme Court found that “[t]he letters are not properly before the court, however, and will not be considered in this appeal.” *Id.* That is, the first two letters were stricken from the record “because their introduction as evidence violated earlier orders in which the PUCO held that refunds for any period of time prior to the imposition of the interim rates were not within the scope of the proceedings,” and because the “third letter was never introduced or proffered at the hearing.” *Id.*

Fourth, PAO contended that requiring a refund from SBC Ohio would not constitute “retroactive ratemaking,” but the Ohio Supreme Court found that this argument depended “on the erroneous premise that no tariffs were ever filed or approved” and “upon the existence of refund commitments by SBC Ohio that were not proven.” *Id.*

## **ARGUMENT**

### **I. PAO’s PETITION IS BARRED BY RES JUDICATA**

PAO’s petition seeks a declaration that its members are entitled to refunds of payphone charges paid after April 15, 1997. But the Ohio commission has already rendered a judgment on that claim, and the Ohio Supreme Court affirmed that judgment. These are final judgments that are not subject to collateral attack. Accordingly, PAO cannot relitigate the refund issue before this Commission.<sup>2</sup>

**A.** “A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies.” *Montana v. United States*, 440 U.S.

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<sup>2</sup> Nor can it relitigate any of the other factual and legal determinations made by the Ohio commission or the Ohio Supreme Court. *See* PAO Pet. at 8-10 (discussing such factual determinations).

147, 153 (1979) (internal quotation marks omitted). “Under res judicata, a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.” *Id.* (citations omitted).<sup>3</sup> Under Ohio law as well, “a valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 653 N.E.2d 226, 229 (Ohio 1995). The doctrine of res judicata precludes a plaintiff from litigating in a subsequent action “all claims which were or might have been litigated in a first lawsuit.” *Id.* (emphasis and internal quotation marks omitted).

As the Supreme Court has said, a “final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land. For claim and issue preclusion (res judicata) purposes, in other words, *the judgment of the rendering State gains nationwide force.*” *Baker by Thomas v. General Motors Corp.*, 522 U.S. 222, 233 (1998) (emphasis added; footnote omitted). Likewise, the Supreme Court has held that “when a state agency acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, . . . federal courts must give the agency’s fact-finding the same preclusive effect to which it would be entitled in the State’s courts.” *University of Tennessee v. Elliott*, 478 U.S. 788, 799 (1986) (internal quotation marks omitted). PAO’s refund claim is therefore dead.

While PAO claims that “neither the PUCO nor the Ohio Supreme Court has addressed the refund issue directly,” PAO Pet. at 7, that is not the case. As noted above, PUCO’s order declined to address the refund issue only because that issue had already been addressed in

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<sup>3</sup> There is no question that PAO was a party to the earlier litigation; nor can there be any dispute that the Ohio court had jurisdiction in the earlier case. Nor is there any dispute that PAO seeks to pursue precisely the same claim that was rejected both by the Ohio commission and by the Ohio Supreme Court – *i.e.*, for refunds of amounts paid under pre-existing state tariffs.

*multiple* previous orders, and PAO had not raised any new legal or factual issue that the PUCO could consider. *See* Ohio Reconsideration Order, 2004 Ohio PUC LEXIS 475, at \*25-\*29. The Ohio Supreme Court specifically affirmed the PUCO on this point. *See* Ohio Supreme Court Decision, 849 N.E.2d at 9-10. PAO presents no justification for the Commission to upset these final judgments.

**B.** It does not matter that the Commission was not a party to the earlier proceeding and that it therefore is not subject to the judgments of the Ohio commission or the Ohio Supreme Court. PAO asks the Commission to act in a quasi-adjudicatory capacity by declaring PAO has a right to a refund if the PUCO determined that SBC Ohio's rates in effect on April 15, 1997 were not compliant with the new services test. As we explained in our earlier comments in response to the Florida Public Telecommunications Association and the Independent Payphone Association of New York,<sup>4</sup> this Commission cannot permit such a collateral attack on a prior judgment. *See, e.g., Puerto Rico Maritime Shipping Auth. v. Federal Maritime Comm'n*, 75 F.3d 63, 66 (1st Cir. 1996); *see also NLRB v. Donna-Lee Sportswear Co.*, 836 F.2d 31, 34-35 (1st Cir. 1987) (NLRB cannot evade effect of prior judgment, even in enforcement action, where dispute was effectively between private parties). As the Federal Circuit has observed, "the same principles of judicial efficiency which justify application of the doctrine of collateral estoppel in judicial proceedings also justify its application in quasi-judicial proceedings." *Graybill v. United States Postal Serv.*, 782 F.2d 1567, 1571 (Fed. Cir. 1986) (citing *Chisholm v. Defense Logistics Agency*, 656 F.2d 42, 46 (3d Cir. 1981)); *cf. Bath Iron Works Corp. v. Director, Office of*

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<sup>4</sup> *See* Comments of AT&T Inc., BellSouth Telecommunications, Inc., and the Verizon Telephone Companies on Florida Public Telecommunications Association's Petition for a Declaratory Ruling, CC Docket No. 96-128, at 9-10 (FCC filed Feb. 28, 2006); Comments of BellSouth Telecommunications, Inc., SBC Communications, Inc., and the Verizon Telephone Companies on Independent Payphone Association of New York's Petition for an Order of Preemption and Declaratory Ruling, CC Docket No. 96-128, at 13-15 (FCC filed Jan. 18, 2005).

*Workers' Comp. Programs*, 125 F.3d 18, 21 (1st Cir. 1997) (noting that “federal agency is normally bound to respect findings by another agency acting within its competence” and that “the tendency is plainly in favor of applying collateral estoppel in administrative contexts”).

## **II. PAO IS WRONG ON THE MERITS AS WELL**

Even if the Commission disagrees with our *res judicata* argument, it should reject PAO’s petition on the merits, for the same reasons that we have identified in response to multiple other petitions that present virtually identical claims.

**A.** As we have pointed out before, a petition such as PAO’s is not an appropriate vehicle for a declaratory ruling. *See* Comments of BellSouth Telecommunications, Inc., SBC Communications, Inc., and the Verizon Telephone Companies on Illinois Public Telecommunications Association’s Petition for a Declaratory Ruling, CC Docket No. 96-128, at 6-10 (FCC filed Aug. 26, 2004) (“Comments on IPTA Petition”); Comments of BellSouth Telecommunications, Inc., SBC Communications Inc., and the Verizon Telephone Companies on Southern Public Communication Association’s Petition for a Declaratory Ruling, CC Docket No. 96-128, at 5-7 (FCC filed Dec. 10, 2004).

**B.** The PUCO’s determination – affirmed by the Ohio Supreme Court – that AT&T should not be liable for refunds was correct. First, and contrary to PAO’s arguments, *see* PAO Pet. at 18-20, there is no doubt that refunds of permanent rates are not permitted under Ohio law and the filed rate and retroactive ratemaking doctrines. *See Lucas County Comm’rs v. PUC*, 686 N.E.2d 501, 504 (Ohio 1997) (“Thus, utility ratemaking by the Public Utilities Commission is prospective only. . . . In short, retroactive ratemaking is not permitted under Ohio’s comprehensive statutory scheme.”); *Cincinnati Gas & Elec. Co. v. Chevrolet*, 791 N.E.2d 1016, 1020-21 (Ohio Ct. App. 2003) (“Thus, ‘a utility has no option but to collect the rates set by the

commission and is clearly forbidden to refund any part of the rates so collected.’ The rates published with PUCO are the lawful rates until the Ohio Supreme Court sets them aside as being unreasonable or unlawful.”) (quoting *Keco Indus. v. Cincinnati & Suburban Bell Tel. Co.*, 141 N.E.2d 465, 468 (Ohio 1957)).

Nor would such refunds be permitted under federal filed rate principles. See Comments on IPTA Petition at 15-17; *Arizona Grocery Co. v. Atchison, T. & S.F. Ry.*, 284 U.S. 370 (1932); *BP West Coast Prods., LLC v. FERC*, 374 F.3d 1263, 1304 (D.C. Cir. 2004) (“*Arizona Grocery* proscribes ‘the retroactive revision of established rates through ex post reparations.’”) (quoting *Verizon Tel. Cos. v. FCC*, 269 F.3d 1098, 1107 (D.C. Cir. 2001)), *cert. denied*, 544 U.S. 1043 (2005). These doctrines thus bar PAO’s theory that the Commission can order refunds of any past rate that allegedly had “anticompetitive” effects. See PAO Pet. at 26.

PAO relies heavily on the Ninth Circuit’s decision in *Davel Communications, Inc. v. Qwest Corp.*, 460 F.3d 1075 (9th Cir. 2006), which allegedly held that the “filed rate doctrine does not apply to an unlawful rate” and that the “filed rate doctrine is inapplicable with respect to the Second Waiver Order.” PAO Pet. at 21. This argument is contrary to the Ninth Circuit’s express holding that the filed-rate doctrine *is* applicable to such claims. See 460 F.3d at 1084-85 (“[W]hile *Davel* may be correct as a general matter that ‘the filed-rate doctrine is all but dead in telecommunications law,’ the ‘but’ qualifier applies here, as the doctrine is not dead with respect [to] the rates at issue in this case.”). The Ninth Circuit instead held that, *assuming that the Second Bureau Waiver Order*<sup>5</sup> requires refunds, as the *Davel* plaintiffs argued – an issue that the Ninth Circuit did not decide – that condition is enforceable, notwithstanding the filed-rate

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<sup>5</sup> Order, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 12 FCC Rcd 21370 (CCB 1997) (“*Second Bureau Waiver Order*”).

doctrine. *See id.* at 1085 & n.3. The court’s opinion makes clear that the *Davel* plaintiffs could defeat the filed-rate defense *only* to the extent that the *Second Bureau Waiver Order* required such refunds. *See id.* at 1088 (“[t]he threshold dispute regarding the refund claim centers on whether the Waiver Order entitles Davel to the refund”).

Under the *Second Bureau Waiver Order*, the commitment to provide refunds applied only where a local telephone company filed new or revised tariffs that reduced payphone line rates and only for the five-week period between April and May 1997 covered by the extension provided by the *Second Bureau Waiver Order*. Furthermore, the local telephone companies’ only commitment was to reimburse the difference between newly filed tariffs (*i.e.*, tariffs filed pursuant to the Waiver Order) and the tariff in effect on April 15, 1997. *See* 12 FCC Rcd at 21379-80, ¶ 20 (requiring reimbursement only for local telephone companies that “seek[] to rely on the waiver” and only “in situations where the newly tariffed rates are lower than the existing tariffed rates”); *see id.* at 21376, ¶ 14. To put it another way, the only effect of the commitment was to ensure that a tariff filed on May 19, 1997 pursuant to the *Second Bureau Waiver Order* would be treated as though it had been filed on April 15, 1997. That outcome has no impact on the question presented here, which is whether PAO has any right to a six-year refund of amounts paid under a tariff approved by the Ohio commission, particularly where the Ohio commission was affirmed by the Ohio Supreme Court in its judgment that the state-law doctrine of retroactive ratemaking would bar such a refund.

C. For the same reason, there is no merit to PAO’s theory that AT&T somehow agreed to an unlimited refund obligation by sending two letters to the FCC and one to the Ohio commission in early 1997. *See* PAO Pet. at 12-15, 23; *id.* at Exhibits One, Two, & Three (reproducing the letters in question). As an initial matter, PAO failed to introduce those letters

properly into the record of the Ohio proceeding. *See* Ohio Reconsideration Order, 2004 Ohio PUC LEXIS 475, at \*29. As the Ohio Supreme Court noted, the first two letters were properly stricken from the record “because their introduction as evidence violated earlier orders in which the PUCO held that refunds for any period of time prior to the imposition of the interim rates were not within the scope of the proceedings,” and the “third letter was never introduced or proffered at the hearing.” 849 N.E.2d at 10. Thus, these letters are also beyond the scope of any review that the Commission might choose to afford here.

In any event, as explained above, the letters in question do not agree to an unlimited refund obligation to be invoked at any future date. *See* Reply Comments of BellSouth Telecommunications, Inc., SBC Communications, Inc., and the Verizon Telephone Companies on Illinois Public Telecommunications Association’s Petition for a Declaratory Ruling, CC Docket No. 96-128, at 7-10 (FCC filed Sept. 7, 2004) (“Reply Comments on IPTA Petition”). As we have explained, the RBOC Coalition’s only commitment was to reimburse the difference between tariffs newly filed by May 19, 1997 (*i.e.*, tariffs filed pursuant to the waiver order) and the tariff in effect on April 15, 1997. *See id.* at 8-9 and *supra* at 10. The point of the May 16, 1997 letter (*see* PAO Pet. Exhibit Three) was to submit cost support for SBC Ohio’s then-existing tariffs, and PAO does not allege that the Ohio commission ordered reductions pursuant to that May 16 filing. Any promise to issue refunds back to April 15, 1997, was therefore extinguished, and in no event could it be used to require refunds for the multi-year period that PAO invokes here.

**D.** Contrary to PAO’s assertions, *see* PAO Pet. at 7, 10-12, 17, nothing in the Commission’s prior payphone orders or in federal law purports to “mandate” refunds when a state commission determines that a particular payphone line rate must be reduced. *See, e.g.*,

Comments on IPTA Petition at 12-15. Even more so, nothing in federal law would “require[]” or “mandate[]” the Commission to preempt any state commission that declined to order such a retroactive refund. *See* PAO Pet. at 16. Instead, prior Commission orders make clear that such remedial determinations are within the discretion of state commissions, applying state law and procedures. *See* Comments on IPTA Petition at 12-15.

### **III. THE COMMISSION SHOULD DENY PAO’S REQUEST FOR A DECLARATION CONCERNING AT&T’S ELIGIBILITY FOR PAYPHONE COMPENSATION**

Insofar as PAO’s petition concerns AT&T’s eligibility for per-call compensation (*see* PAO Pet. at 23-25), it should be denied (even apart from the res judicata bar). Like IPTA and SPCA, PAO does not itself claim to be a payor of per-call compensation. Given PAO’s lack of standing, *see* Comments on IPTA Petition at 17-18, the Commission should exercise its discretion to dismiss its claim unaddressed.

Moreover, PAO’s argument is without merit. The Commission’s rules required that a LEC have payphone service tariffs on file with the responsible the state commission. *See* Order on Reconsideration, *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 21233, 21293-94, ¶¶ 131-132 (1996), *aff’d in part and remanded in part sub nom. Illinois Pub. Telecomm. Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir. 1997). The record reflects that AT&T had such tariffs on file and that they were approved by PUCO. *See* Ohio Order, 2004 Ohio PUC LEXIS 363, at \*6 (finding that SBC Ohio’s “tariff filings were consistent with the Act, the FCC’s decisions in CC Docket No. 96-128, and the Commission’s May 22, 1997 entry in this proceeding”).<sup>6</sup> Nothing more was

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<sup>6</sup> PAO is therefore incorrect in asserting that it is “undisputed, and beyond dispute, that the PUCO’s September 1, 2004 Report and Order was the first Order issued by the PUCO addressing the lawfulness of SBC’s rates.” PAO Pet. at 19; *see also id.* at 22 (same).

required to comply with the eligibility requirements contained in the Commission's orders. *See* Comments on IPTA Petition at 18-20.

### CONCLUSION

For the foregoing reasons, the Commission should dismiss or deny PAO's petition.

Respectfully submitted,

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