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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Application )  
of Cincinnati Bell Telephone Company )  
and Cincinnati Bell Long Distance for )  
a Waiver of Certain of the Commission's )  
Local Service Guidelines. )

Case No. 99-1496-TP-DNC

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**REPLY COMMENTS OF  
CINCINNATI BELL TELEPHONE COMPANY  
AND CINCINNATI BELL LONG DISTANCE**

On November 17, 1999, a joint application was filed by Cincinnati Bell Telephone Company ("CBT") and Cincinnati Bell Long Distance ("CBLD") seeking a waiver from certain guidelines governing local exchange competition adopted by the Commission in Case No. 95-845-TP-COI ("845 Guidelines"). On January 11, 2000, an Entry was issued by the attorney examiner directing interested parties to submit initial comments on January 27, 2000 and Reply comments on February 7, 2000. Pursuant to the attorney examiner's entry, this pleading represents the Reply comments of CBT and CBLD ("Joint Applicants").

The Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers of the state of Ohio, AT&T Communications of Ohio, Inc. ("AT&T") and MCI WorldCom, Inc. ("MCI") filed objections to the Joint Application prior to the attorney examiner's January 11 entry. On January 27, 2000, United Telephone Company of Ohio d/b/a Sprint and Sprint Communications Company (collectively "Sprint") and ICG Telecom Group, Inc. ("ICG") filed comments similar to those of AT&T and MCI, generally opposing the competitive entry of the Joint Applicants. Also on January 27, Telephone Service Company and TSC Communications, Inc. ("TSC") filed comments

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that took no position on the Joint Applicant's waiver, except to request that the Commission grant "me too" requests. In addition, on January 27, Ameritech Ohio, which has agreed to expand the competitive playing field in its own right and obviously understands the merits of a competitive marketplace, filed comments in support of the Joint Application, asking the Commission to grant the waivers expeditiously. Finally, AT&T and MCI filed motions to intervene in the proceeding.

The Joint Applicants are disappointed, but not surprised, that there is such opposition to their efforts to expand competition. While MCI states that it is not interested in delaying this proceeding, and AT&T notes that it supports competition, their comments obviously show otherwise. These formidable global entities, together with Sprint and ICG, seek to prevent the Joint Applicants from competing in new markets based on the notion that CBT, as an incumbent LEC serving the Cincinnati market, can somehow disadvantage these national companies by providing competition in various areas of Ohio. The Joint Applicants believe that its proposed waiver furthers the public interest by eliminating unnecessary barriers to competition. OCC's opposition to the Joint Application is also misplaced. Burdening CBT with commitments not required of other providers will not foster the residential competition that the OCC seeks and will serve only to hamper CBT's ability to compete at all outside of its traditional service area. Uneconomic market entry benefits neither consumers nor providers in the long-run, and therefore, the Joint Applicants strongly encourage the Commission to ignore the OCC's demands as poor public policy.

The Joint Application seeks relief from rules that have impeded the Joint Applicants' ability to compete on the same basis as other industry players. The

justifications offered by the parties opposing the request fail to recognize the changed telecommunications environment, CBT's unique circumstances and the public policy benefits of additional competition. The opposing parties are also apparently confused about, or have chosen to ignore, the existing relationship of CBT and CBLD, the continued application of the affiliate transaction rules to CBT and CBLD, the continuing applicability of its alternative regulation stipulation to CBT and the obvious benefits of increased scale and scope to a provider's ability to compete efficiently in the telecommunications industry.

The Joint Applicants do not challenge the intervention requests of AT&T and MCI, but instead will focus on the parties' substantive allegations. What follows is the Joint Applicants' response to the areas of concern raised by the pleadings of those parties opposing the waiver request.

***A. OCC's Demand for the Provision of Residential Service Should Not Be Granted.***

The OCC's demand that the Joint Applicants provide residential service in a manner similar to that established as a condition for the approval of the SBC/Ameritech merger is inappropriate. No other competitive provider is required to provide residential service. In addition, it is inappropriate because it assumes that uneconomic deployment of local residential service is in the public interest. The Joint Applicants should have the same opportunities to serve residential customers as other providers do—to make a business determination as to where, when and how to serve them. As stated by Ameritech in its comments:

OCC offers only the time-worn claims concerning "cross subsidization" and "anti-competitive practices" without explaining the basis for either concern in the context of the CBT/CBLD application. OCC Objections, p.

6. Moreover, OCC's reference to the differences between the provision of basic local exchange services and the provision of competitive services ignores the reality of today's telecommunications marketplace. (Ameritech Comments, p. 4.)

If the waiver requests are approved, CBT expects to expand into other areas of Ohio as its business plan dictates. Approval will also permit CBLD to be a viable statewide competitor for both long distance and local services, including the provision of services in CBT's traditional serving area. While some parties have expressed concerns about such competition, the affiliate transaction rules and Commission-approved interconnection agreements assure that fairness will be exercised by both entities and that CBT cannot favor CBLD. OCC's demand is inappropriate and well beyond its statutory authority. The Commission should give no credence to the OCC's assertions and should approve the Joint Application on the grounds that it will provide an overall benefit to all telecommunications customers in the State of Ohio.

***B. The Full Service Requirement Waiver Should Be Granted.***

OCC opposes the Joint Applicants' request for a waiver of the Commission's twenty-four month build-out requirement for a variety of reasons, all of which appear to be based on misinformation or misunderstanding of the waiver application. The OCC appears to be confused about the relationship between CBT and CBLD, believing that there is some connection between the success or lack of success of CBLD and the expansion or lack of expansion experienced by CBT. CBLD and CBT are separate legal and operating entities of a common holding company, and the success of either does not directly impact the business strategy of the other. The success or failure of either entity is completely irrelevant to the twenty-four month build-out requirement waiver sought by the Joint Applicants. In no way does this Joint Application represent an attempt by the

Joint Applicants to escape the operation of the affiliate transaction rules, which the OCC implies. However, the Joint Applicants are opposed to any attempt to place additional burdens on them simply because they are related entities. Such a step would be unduly burdensome and discourage competitive entry .

Although MCI concedes that "one can debate the reasonableness of a 24-month deadline," it opposes the Joint Applicants' request as being unfairly discriminatory. The Joint Applicants disagree. Clearly, AT&T, MCI and Sprint are huge corporations that are extremely well capitalized. As such, their ability to enter and fully "build-out" a specified market is significantly less burdensome than it is for CBT or CBLD. While other providers may face circumstances similar to CBT and CBLD, Joint Applicants' size and relatively limited financial resources justify the Commission granting this waiver at this time.

AT&T and TSC do not oppose this waiver request and suggest that the same waiver should be extended to all NECs. Ameritech supports the waiver and notes that it should be granted to all carriers under the Commission's "me-too" policy. The Joint Applicants do not oppose the extension of the waiver to the entire industry, but do not support delaying relief sought by the instant request if the Commission determines that it must provide industry relief in a generic proceeding. Even if the Commission were not to grant a blanket waiver as suggested by AT&T and TSC, there is nothing to preclude any NEC from seeking a similar waiver as the Joint Applicants' have done.

**C. *Joint Applicants Have Carried the Burden of Justifying Their Request for a Waiver of the Commission's Separate Subsidiary Requirement Guidelines.***

The parties opposing the Joint Applicants' request to waive the separate affiliate requirements for the provision of local service incorrectly interpret the facts and the law in this matter. Both the OCC and AT&T erroneously argue that through this waiver request the Joint Applicants are seeking relief from the affiliate transaction rules. This simply is not true. CBT and CBLD will continue to be subject to the affiliate transaction rules. MCI incorrectly asserts that there is a "tad of inconsistency" in the Joint Applicants seeking relief for a separate subsidiary outside of its local serving area, while seeking permission to create a separate subsidiary to operate within its local serving area. ICG argues that the Joint Applicants have not demonstrated how they have promoted competition in CBT's existing serving area. Sprint poses an irrational solution by suggesting somehow that CBT could enter a contract with its NEC affiliate to accomplish the same results as provided by the waiver.

First, the Joint Applicants' intend to follow the affiliate transaction requirements in their entirety. Under those rules, competitors, consumers and regulators are assured that incumbent LECs cannot improperly cross-subsidize services when transacting business with affiliates. CBT undergoes periodic audits to assure compliance with the affiliate transaction rules and that accounting practices are properly and consistently applied.

MCI's comments, that the Joint Applicants' waiver requests are inconsistent and suspect, miss the point. Both CBT and CBLD seek authority to provide local services as NECs anywhere in Ohio, seeking to do so using an organizational structure that permits

them to operate efficiently. There is nothing inconsistent or suspect about CBT wanting to eliminate the burdensome requirements of a separate affiliate for providing local service outside its current service area. It makes both economic and business sense to avoid the complications and inefficiencies inherent when two legal entities must do the job of one. Further, a single corporate entity permits streamlined decision-making and fast execution—two elements key to success in a competitive environment. In addition, CBT neither intends nor does the waiver request relief from the existing alternative regulation plan.

CBLD seeks similar efficiencies. Granting the proposed waivers avoids inefficiencies and allows the Joint Applicants to choose the most efficient means to promote and provision their services. These efficiencies are needed by the Joint Applicants because of their modest size, if they are to be cost competitive in the increasingly competitive environment. MCI, Sprint and AT&T have recognized these needs in their own business plans and have sought to achieve them through their recent or proposed mergers. In sum, the waiver seeks to eliminate the separate subsidiary requirements so that both CBT and CBLD can operate anywhere within the state of Ohio - the same as MCI and AT&T can do today. Both entities, however, will remain separate legal entities in full compliance with affiliate transaction rules.

ICG's argument that the Joint Applicants' requests are premature and should await the generic proceeding ignores both the facts in the petition and the realities of the marketplace. The Joint Applicants have provided significant information regarding the number of providers, interconnection agreements, collocators and competitive switches in the Cincinnati market. Those facts alone justify Commission action. ICG's suggestion

that CBT has not precisely stated what steps it has taken to promote competition improperly assumes that CBT has an obligation to meet some predetermined standard before it should be granted the requested waivers. No such requirement exists. The Joint Applicants have provided evidence of its market opening initiatives, in part, to highlight the unique circumstances that differentiate them from other Ohio companies, circumstances that justify approval of the requested waivers.

There appears to be a general misunderstanding by the parties with regard to the relationship between CBT and CBLD. For example, AT&T argues that CBT is attempting to create a "sham" NEC. OCC argues that the success of CBLD has not stymied CBT. MCI raises a similar misunderstanding and even asks the question, "Does CBT intend to compete against CBLD for local customers?" CBLD is not a sham NEC, as the Commission well knows. The success of CBLD has no relevance to the request of CBT since both are separate corporate entities. And as far as MCI's question concerning the competitive nature of both entities, suffice it to say that viable competitive alternatives will be provided by both CBT and CBLD only if the waiver were to be granted by the Commission.

CBLD is a separate affiliate and has no relationship with CBT except for the fact that they are both subsidiaries of a common holding company. The success or failure of expansion will be felt by each entity separately, in that financial and operating results of each affiliate will continue to be maintained separately. Sprint's comment that CBT could enter into a contract with CBLD and accomplish the same end as the waiver misunderstands either the reason for the waiver or the application of the Commission's current rules. The waiver is required to permit CBLD to operate as a NEC within CBT's



operating area. Since today's local service guidelines prohibit such activities, a contract would not be a solution.

The purpose of this waiver request is to permit CBT to provide out-of-territory local telephone service without the necessity of creating yet another affiliate and to permit CBLD to offer statewide services. OCC's and MCI's representations regarding the size of CBT in relation to smaller LECs is simply irrelevant to the Joint Application. The recent merger of the former holding company of the Joint Applicants is irrelevant to the waiver request. OCC's reference to a combined capitalization of over \$7.2 billion is misplaced and does not impact the need for the waiver. In addition, the Commission has never held that size is an appropriate benchmark for approving a waiver request. What is important, however, is that the unique combination of size, marketing initiatives, the level of competition, innovation and high quality service, and competitive vulnerability offer a basis for seeking relief from the Commission's guidelines. If size is relevant to the Commission's decision to grant relief, then the appropriate comparison is CBT versus AT&T or MCI.

The OCC also questions the impact on the Joint Applicants if the Commission were to grant the requested waiver. Both the OCC and MCI rely on a 1988 case to support their rationale for denying the Joint Applicants relief from the separate affiliate requirements. Reliance on a case, decided over a decade ago, that neither contemplated the transformational changes in technology nor the reforms of the 1996 Telecommunications Act, is totally inappropriate. Requirements for number portability, interconnection, collocation, unbundled network elements, TELRIC-based pricing, resale, strengthened affiliate transaction rules and multiple competitors, collectively provide

sufficient justification for the Commission to depart from that case. The real benefit of granting the requested waiver is enhanced competition for local services. The public interest is supported by the benefit from the positive effect that multiple local suppliers will have on the economy.

The OCC also argues that the granting of this application will create a precedent that the Commission will be forced to apply to all large ILECs. This assertion is simply wrong. CBT finds itself in a unique position, in that it is large enough to provide innovation in the marketplace, but lacks the significant scale of the RBOCs. The impact on corporate resources caused by the formation of separate affiliates is significantly and disproportionately greater on CBT than on the much larger RBOCs with greater economies of scale. The Commission certainly maintains discretion to grant waivers as it deems appropriate based on the facts presented.

The OCC asserts that other large ILECs have not requested similar treatment. Sprint itself, which opposes Joint Petitioners' request here, has filed a similar waiver seeking authority for its NEC to offer a new service in its ILEC territory. (See Case No. 99-1584-TP-AAC). Not surprisingly, Sprint's comments completely ignore its own waiver. Even if, however, granting Joint Petitioners' waiver were to set a precedent, it is not clear what harm the OCC foresees. Eliminating an unnecessary separate subsidiary requirement allows companies to operate more efficiently and doing so fosters increased competition. Seemingly, this is an objective that the OCC would endorse.

AT&T argues that the request should be denied due to CBT's anticompetitive behavior. ICG raises a similar argument and suggests the Commission is simply asked to accept CBT's allegations. The Joint Applicants merely suggest that ICG read the Joint

Application and its own interconnection arrangement with CBT, the same arrangement with terms and conditions under which CBT and ICG currently exchange local traffic. AT&T believes that the wholesale discount is "paltry," interim rates are many times that of Ameritech and there are numerous other issues that "entrench CBT's monopoly position." AT&T's rhetoric and ICG's claims obviously lack merit.

First, CBT enumerated in its joint application the number of pro-competitive steps it has taken and will not again articulate those here. Second, the wholesale discount was submitted and followed a precise formula developed by the Commission. After a thorough review by the Commission Staff, the Commission ultimately approved the wholesale discount rate. Further, AT&T's interest in a resale discount is suspect since it has stated that its national strategy does not include resale as a means for entering local markets. Further, AT&T fully participated in and presented evidence in CBT's TELRIC proceeding that has just recently concluded. New unbundled network element prices will be established as a result of the Commission's decision in that proceeding, so AT&T's claim that CBT's wholesale rates are anticompetitive is without merit.

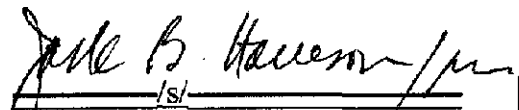
CBT continues to operate under a temporary suspension regarding UNE combinations as negotiated in its alternative regulation plan, to which AT&T agreed. That suspension remains in place until the rules go into effect, the Eighth Circuit issues its decision and the FCC clarifies the scope of the combination requirement. AT&T has had an interconnection agreement in place with CBT for two years and has just begun negotiations of a second generation of that agreement. If AT&T has any concerns related to any aspect of competitive terms and conditions, then the proper forum to raise those issues is in that negotiation process, not here. If AT&T is not satisfied with its

interconnection agreement, then it can pursue an arbitration through the Commission's local competition guidelines regarding any issue that remains unresolved.

**SUMMARY**

The Joint Applicants stand ready to bring competitive alternatives to the State of Ohio, potentially including residential customers, where it makes economic sense to do so. The parties opposing the Joint Application have raised a series of unsupported allegations, have misinterpreted and/or misrepresented facts and have not provided a reasonable basis for denying Joint Petitioners' requests. The Joint Applicants support TSC's view that the Commission should uniformly apply the result here to other similarly situated carriers. In addition, the Joint Applicants support Ameritech Ohio's view that the requested waivers should be approved expeditiously. For these reasons, the Commission should reject the parties' opposition and approve the Joint Application without further delay.

Respectfully submitted,

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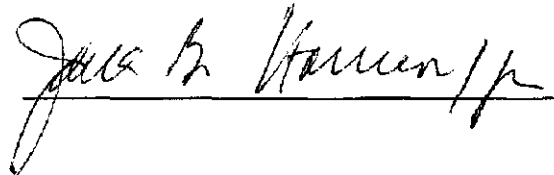
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing has been sent by ordinary United States mail, postage prepaid to all of the persons on the attached service list on this 7<sup>th</sup> day of February, 2000.

A handwritten signature in dark ink, appearing to read "Jack B. Harman", is written over a horizontal line.

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