File

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

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-UNC

JOINT COMMENTS OF AT&T COMMUNICATIONS OF OHIO, INC. AND MCI WORLDCOM, INC.

The attorney examiner's entry in this docket of January 11, 2000 invited interested persons to file comments regarding the above-entitled joint waiver application of Cincinnati Bell Telephone Company ("CBT") and Cincinnati Bell Long Distance ("CBLD") (collectively, the "joint applicants") on or before January 27, 2000. AT&T Communications of Ohio, Inc. ("AT&T") and MCI WorldCom, Inc. ("MCI WorldCom"), whose unopposed motions to intervene in this proceeding are currently pending before the Commission,[1] hereby submit the following in response to said entry.

As their joint comments, AT&T and MCI WorldCom incorporate, as if fully restated herein, the concerns and arguments set forth in the memoranda submitted in support of their respective motions to intervene. In addition, AT&T and MCI WorldCom supplement those concerns and arguments by including, as Attachment A hereto, an exchange of correspondence

[1] AT&T filed its Motion to Intervene and Partial Objection to CBT's Waiver Request on December 23, 1999. MCI WorldCom filed its Motion to Intervene on December 27, 1999. The joint applicants did not oppose either motion.

between counsel for AT&T and counsel for CBT which further demonstrates CBT's failure to remove all barriers to competitive entry in its service territory, a Commission-established condition precedent to a waiver of the separate affiliate requirement of LSG II.A.4 sought through the application in this case (*see In the Matter of the Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues*, Case No. 95-845-TP-COI, Entry on Rehearing dated November 7, 1996, at 9-10). As AT&T noted in the memorandum accompanying its motion to intervene, part of CBT's failure to meet this standard is its continuing refusal to provide carriers with combinations of unbundled elements, including the UNE platform. The attached correspondence reveals the lengths to which CBT will go to avoid its legal obligation to open its market to competition.

Under the terms of the stipulation that implemented CBT's alternative regulation plan, within 45 days of the U.S. Supreme Court's final order in *Iowa Utilities Board v. FCC*, CBT was to notify the stipulating parties in writing whether it intended to reapply for suspension of its obligations to provide UNE combinations. This triggering event occurred almost one year ago. When asked of its intent, CBT stated that it did not believe it was obligated to make such a determination until the remand to the FCC was concluded. Although not necessarily agreeing that this response was consistent with the terms of the stipulation, AT&T did not challenge this CBT position. However, when the FCC issued its Third Report and Order in response to the Supreme Court's remand (released November 5, 1999), CBT still did not comply with the requirement to provide written notice of intent within 45 days. Thus, AT&T made the written request to CBT which is included in Attachment A.

Rather than complying with its obligation under the stipulation to advise of its intent regarding combinations, CBT chose form over substance, claiming that the Third Report and

Order had not yet been published in the Federal Register. Although absolutely disagreeing with CBT's interpretation of its obligation under the stipulation, AT&T and MCI WorldCom would note that the Third Report and Order was published in Vol. 65, No. 11 of the Federal Register on January 18, 2000, thus eliminating even CBT's "form" argument. Accordingly, AT&T and MCI WorldCom expect CBT to comply immediately with the requirements of the stipulation. As of this date, CBT has still not done so. However, the point, for purposes at hand, is that this correspondence shows that CBT has continued to block competition, and, in particular residential competition, it its service area[2] and has not satisfied the condition precedent to a request for waiver of LSG 2.A.4.

By letter dated January 25, 2000, the joint applicants advised the Commission and the parties that it would not be filing initial comments in this case, contending that the application, itself, adequately articulates their position. However, this letter does indicate that the joint applicants intend to file reply comments to address issues raised by comments filed by other parties. AT&T and MCI WorldCom would offer the following observations.

First, as the parties seeking the waiver of certain of the Commission's Local Service Guidelines ("LSG"), CBT and CBLD plainly have the burden of showing that the waivers are justified. Far from meeting the "detailed justification" requirement of LSG II.A.2.a, the joint application now before the Commission contains only vague, general comments regarding the state of competition and contains no rationale which would support excusing the joint applicants from the LSG requirements in question or according CBT and/or CBLD a different treatment

[2] AT&T and MCI WorldCom would note that in a very short time after the UNE platform became available in New York, they were serving in over 500,000 residential customers.

than other similarly situated providers. If, as their January 25, 2000 letter indicates, the joint applicants are content to stand on the application as filed, AT&T and MCI WorldCom submit that, for those reasons set forth above and in their earlier memoranda, the application should be denied out of hand.

Second, the joint applicants' decision to defer their response to the issues raised by AT&T and MCI WorldCom until their reply comments serves to deny the Commission the benefit of a full exchange between the parties prior to determining the future course of this proceeding. AT&T and MCI WorldCom respectfully submit that fairness dictates they be given an opportunity to respond to these comments, either through filing a surreply or by participating in the hearing which should be ordered if the Commission finds that the joint application should not be denied out of hand. Clearly, the joint application cannot be granted based on the information now before the Commission.

Respectfully submitted,

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ATTACHMENT A

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January 5, 2000

VIA OVERNIGHT MAIL

Douglas E. Hart
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Re: PUCO Case No. 96-899-TP-ALT

Dear Doug:

As you may know, pursuant to its alternative regulation plan, CBT was obligated to provide notice of whether it intended to seek a suspension of its obligation to provide combinations of unbundled network elements if the United States Supreme Court overturned the Eighth Circuit's decision in Iowa Utilities Bd. v. FCC, 120 F.3d. 753 (1997) and, most specifically, the Eighth Circuit's vacatur of 47 C.F.R. § 315(b).

On January 25, 1999, the Supreme Court did just that. The Court overturned the Eighth Circuit and reinstated Rule 315(b), which forbids an incumbent from separating already-combined network elements before leasing them to a competitor. However, on unrelated grounds, the Court also vacated 47 C.F.R. § 319, which detailed the network elements that incumbents must provide pursuant to the 1996 Telecommunications Act. The Court remanded to the FCC the issue of what network elements an incumbent must make available.

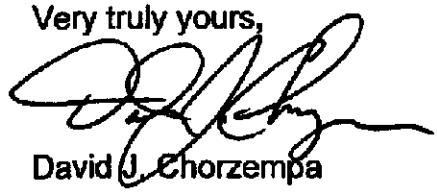
Soon thereafter, Mr. Donald Marshall, Assistant Vice President of Regulatory Affairs at CBT, sent a letter to the intervening parties indicating that because the list of unbundled elements was subject to FCC remand, CBT would await the results of such remand order before making any decision regarding a suspension request. No party objected to this letter.

Since that time, on November 5, 1999, the FCC's remand order was released. In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, rel. November 5, 1999. That order specifically defines the unbundled network elements that incumbents like CBT must make available to requesting carriers. That order, in combination with 47 C.F.R. § 315(b), obligates CBT to provide, at the very least, combinations of network elements that currently exist in its network.

It has now been two months since the FCC's order, yet CBT has not given any notice that it intends to seek a suspension of this obligation. Since CBT has not sought to avoid this legal obligation, AT&T can only assume that CBT intends to comply with the law and provide combinations of network elements, including the combination commonly referred to as the unbundled network element platform.

AT&T, therefore, requests that CBT indicate its intent by responding to this letter within ten (10) calendar days. If CBT intends to seek a suspension of its legal requirement to provide combinations of network elements, I would further request that CBT indicate when it will file this suspension request. I remind you that pursuant to its alternative regulation plan, CBT committed to "support an expeditious resolution" of this suspension request. Once CBT has made its intent clear, it may be necessary to schedule a prehearing conference to determine when CBT will file additional TELRIC cost studies pricing the combinations of network it is now obligated to provide.

Very truly yours,



David J. Chorzempa

cc: Attached service list via regular mail
DJC/er

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January 14, 2000

JAN 18

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Re: PUCO Case No. 96-899-TP-ALT

Dear Dave:

This is in response to your letter of January 5, 2000. We respectfully disagree with your conclusions with respect to the necessity for CBT to either provide combinations of network elements or seek an extension of its § 251(f) suspension. The FCC's remand order is not effective until 30 days after publication in the Federal Register. At this time, the UNE remand order has not yet been published in the Federal Register. Furthermore, the FCC declined to interpret the scope of the term "currently combines" contained in § 51.319(b) until the Eighth Circuit issues its decision on remand with respect to §§ 51.319(c)-(f). Until the rules go into effect and the FCC clarifies the scope of the combination requirement, CBT believes that its suspension request remains in place. In addition, there may be appeals of the UNE remand order, leaving additional uncertainty as to which UNEs must be offered on an unbundled basis. In any event, CBT has offered and continues to offer certain loop/transport combinations, which obviate the need for either local switching or the UNE platform in order for CLECs to provision local service.

Very truly yours,

FROST & JACOBS LLP

Douglas E. Hart

DEH:
cc: All parties
727603.02

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing motion and memorandum has been served upon the persons and parties listed below by first class mail, postage prepaid, this 27th day of January 2000.

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