

6

file

BEFORE

RECEIVED REGULATING DIV
JAN 27 PM 4:59

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) Case No. 99-1496-TP-UNC
Waiver of Certain of the Commission's)
Local Service Guidelines.)

PUCO

INITIAL COMMENTS OF UNITED TELEPHONE
COMPANY OF OHIO d/b/a SPRINT and
SPRINT COMMUNICATIONS COMPANY L.P.

I. INTRODUCTION

On November 17, 1999, Cincinnati Bell Telephone Company ("CBT") and Cincinnati Bell Long Distance ("CBLD") filed a Joint Application seeking waivers of several provisions of the Commission's Local Service Guidelines ("LSG"). The Joint Application sought a waiver of Section II.A.4 of the LSG to permit CBT to compete as a New Entrant Carrier ("NEC") outside its existing local service area without creating a separate affiliate subject to the affiliate transaction guidelines contained in PUCO Case No. 86-2173-TP-ACE (the "UTLD Case"), PUCO Case No. 93-1081-TP-UNC (the "AADS Case") and PUCO Case No. 89-563-TP-COI.¹

CBLD also requested a permanent waiver of Commission rules to the extent necessary to allow it to compete as a NEC throughout Ohio, including within CBT's existing local service area.²

Finally, the Joint Applicants sought a waiver of Section II.C.4. which requires that NECs provide service within the entire area depicted on the maps submitted with the NEC registration form within 24 months of receiving authorization from the Commission.³

¹ Joint Application at p. 1.

² *Id.*

³ Joint Application at p. 3.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician See Date Processed 1-28-02

On December 8, 1999, the Ohio Consumers' Counsel ("OCC") filed objections to the Joint Application. Subsequently, both AT&T Communications of Ohio, Inc. ("AT&T") and MCI WorldCom, Inc. ("MCIW") filed motions to intervene and objections to the Joint Application.

On January 11, 2000, the Commission issued an entry soliciting comments on the Joint Application. Pursuant thereto, United Telephone Company of Ohio d/b/a Sprint and Sprint Communications Company L.P. (collectively "Sprint") submit their comments regarding the Joint Application.

II. CBT AND CBLT HAVE FAILED TO JUSTIFY THEIR WAIVER REQUESTS

A. Joint Applicants Have Made An Insufficient Factual Showing In Support Of Their Waiver Request.

The Joint Application is replete with assertions regarding the uniqueness of CBT, its service territory, its quality of service, its customers' usage patterns, and its vulnerability to competition.⁴ The Joint Application also contains a number of self-laudatory assertions.⁵

However, the factual claims of the Joint Applicants are almost uniformly unsupported by any citation to any authority. They are also in several cases either counter-intuitive or self-contradictory and, in one instance, flat-out wrong. For example, while CBT, on the one hand claims how vulnerable it is to competition,⁶ it is obvious from other statements in the Joint Application that competition has as yet had minimal impact upon CBT.⁷

⁴ Joint Application at pp. 10-13.

⁵ *Id.* at p. 11.

⁶ Joint Application at pp. 12, 13.

⁷ Joint Application at 11 ["...this year, CBT achieved the prestigious Forbes 400 Platinum Company list as one of the top performing growth companies."]

Where the Joint Applicants discuss trends in other jurisdictions in support of their claim to an exemption from the separate affiliate requirement,⁸ the Joint Applicants do not provide any case citations. More importantly, the Joint Applicants incorrectly state that Sprint LLC, which, according to the Joint Applicants is the Sprint ILEC in Las Vegas, has obtained approval to operate outside of its traditional serving area.⁹ However, the Sprint ILEC in Nevada has not obtained such authority; it was only the Sprint competitive local exchange carrier, a part of Sprint Communications Company L.P. (which is not the Sprint ILEC in Nevada) that was certified in Nevada outside of the Sprint ILEC territory. Sprint Communications Company L.P. was granted authority to provide CLEC services outside of Sprint's ILEC service territory in accordance with CPC 946 Sub 3, Docket No. 96-9014, subject to the limitations in the Stipulation in Docket No. 97-8006 approved by the Public Utilities Commission of Nevada, on March 6, 1998.

B. CBT Has Failed to Justify Its Request For A Waiver Of The "Separate Affiliate" Requirement.

As AT&T, MCIW, and OCC have already argued persuasively in their objections, CBT has failed to meet its burden of justifying a waiver from the separate affiliate requirement. In fact, CBT did not even address the Commission's rationale for the requirement, i.e., the "potential for cross-subsidization and anti-competitive practices to occur between the two companies."¹⁰ Because CBT has failed to address the underlying purpose of the separate affiliate requirement, it has not justified its waiver request.

CBT claims that, unless the waiver is granted, the separate affiliate requirement will make it "a losing proposition" for CBT to compete as a NEC throughout Ohio.¹¹

⁸ Joint Application at pp. 8, 9.

⁹ Joint Application at p. 9.

¹⁰ UTLD Finding and Order (December 7, 1998) at pp. 86, 87.

¹¹ Joint Application at 7.

One might reasonably question this claim inasmuch as CBLD is either actively competing or standing ready to serve customers in a significant number of exchanges throughout Ohio.

CBT declares that the separate affiliate requirement limits economies of scale and other efficiencies that CBT allegedly needs to compete as a NEC. What CBT does not do, however, is explain why the services it desires to provide to its NEC operations from its ILEC operations cannot be obtained by contract even if the separate affiliate requirement remains. The absence of such a showing is yet another reason why the waiver request should not be granted.

C. Any Revision Of The Requirement Contained In LSG
Section II.C.4 Should Be Undertaken In The Context Of
The Commission's Ongoing Review Of The Local Service
Guidelines In Case No. 99-998-TP-COI.

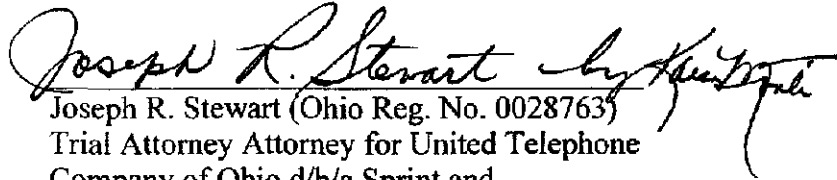
Granting the Joint Applicants' request that they be excused from complying with Section II.C.4 of the LSG would be unreasonably discriminatory. That provision of the LSG imposes a burden upon all NECs, and the Joint Applicants have failed to demonstrate any reason why they alone should be excused from the requirement.

Sprint respectfully submits that any revisions to Section II.C.4 ought to be considered in the ongoing Commission review of the Local Service Guidelines. If what the Joint Applicants are seeking is the ability to offer service to only some, rather all, customers located within a particular service area, they have also failed to justify their request for such a "cream-skimming" exception.

III. CONCLUSION

The Joint Applicants have failed to meet their burden to justify their requested waivers from the Local Service Guidelines and from the affiliate transaction rules contained in UTLD and AADS. Accordingly, the Joint Application should be denied.

Respectfully submitted,



Joseph R. Stewart (Ohio Reg. No. 0028763)
Trial Attorney Attorney for United Telephone
Company of Ohio d/b/a Sprint and
Sprint Communications Company L.P.
50 W. Broad Street, Suite 3600
Columbus, OH 43215
Phone: (614) 220-8625
Fax: (614) 224-3902

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Initial Comments Of United Telephone Company Of Ohio d/b/a Sprint and Sprint Communications Company L.P. was sent via U. S. mail with adequate postage affixed thereto, to the following parties on this 27th day of January, 2000.


Joseph R. Stewart

FOR CINCINNATI BELL
TELEPHONE COMPANY:

Duane W. Luckey
Section Chief
Assistant Attorney General
180 East Broad Street
Columbus, OH 43215

Christopher J. Wilson
Attorney
Cincinnati Bell Telephone Company
201 East Fourth Street
Room 102-620
Cincinnati, OH 45201

Timothy L. Shindeldecker
Vice President
Cincinnati Bell Long Distance
36 East Seventh Street, Suite 2300
Cincinnati, OH 45202

FOR OHIO CONSUMERS'
COUNSEL:

David C. Bergmann
Trial Attorney
Assistant Consumers' Counsel
Ohio Consumers' Counsel
77 South High Street, 15th Floor
Columbus, OH 43266-0550

FOR MCI WORLDCOM, INC.:

Barth E. Royer
Judith B. Sanders
Bell, Royer & Sanders Co., LPA
33 South Grant Avenue
Columbus, OH 43215

David W. McGann
MCI WorldCom, Inc.
Suite 3700
205 North Michigan Avenue
Chicago, IL 60601

FOR AT&T COMMUNICATIONS
OF OHIO, INC.:

Benita A. Kahn
Vorys, Sater, Seymour & Pease
52 E. Gay St.
P. O. Box 1008
Columbus, OH 43266-0550

David Chorzempa
AT&T Corporation
227 West Monroe Street
13th Floor
Chicago, IL 60606