

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)	
Cincinnati Bell Telephone Company LLC)	Case No. 08-1124-TP-WVR
for Waiver of Certain Minimum)	
Telephone Service Standards)	
Pursuant to Chapter 4901:1-5, Ohio)	
Administrative Code.)	

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Because of a windstorm that occurred in Ohio on September 14, 2008, the Cincinnati Bell Telephone Company LLC (“CBT” or “Company”) asked the Public Utilities Commission of Ohio (“PUCO” or “Commission”) for permission to add 48 hours to the calculations for customer credits for service outages under the PUCO’s Minimum Telephone Service Standards (“MTSS”) during the September 14-19, 2008 period.¹ The Office of the Ohio Consumers’ Counsel (“OCC”), an intervenor in this proceeding on behalf of residential utility consumers,² files these Comments on the Application and CBT’s documentation to supplement the Application.³

The MTSS require local exchange carriers (“LECs”) to provide credits for customers if service outages are not repaired in the time required by the MTSS. Under Ohio Adm. Code 4901:1-5-08(C)(1) (“Rule 8(C)(1)”), LECs must credit one full month

¹ Application (September 26, 2008).

² OCC’s motion to intervene was granted by an Entry issued on November 6, 2008 (at 3).

³ Supplemental Documentation (October 24, 2008).

of a customer's regulated local service charges if the customer's service is out more than 72 hours, including weekends and holidays.

Under the MTSS, a LEC may ask for permission to add 48 hours to the timeframes for calculating the customer credits under Rule 8(C)(1) if either of two conditions exists: the LEC experiences "at least a 300% increase in the number of out-of-service reports as compared to the average number of out-of-service reports for the affected month(s) of the three previous years,"⁴ or there was a "declaration of a state of emergency by the governor or a duly authorized county official for the county in which the exchange is located."⁵ Only exchanges that had more than ten daily out-of-service reports are eligible for a "grace period."⁶

CBT originally sought a "grace period" for all twelve of its exchanges.⁷ After filing the Supplemental Documentation, which provided data regarding the total number of out-of-service trouble reports in each exchange for the entire September 14-19 timeframe,⁸ CBT withdrew the Bethel and Seven Mile exchanges because they did not have enough trouble reports on any day during the September 14-19 timeframe to qualify for a "grace period."⁹ Thus, CBT now seeks a "grace period" to avoid paying customer credits in only ten exchanges: Bethany, Cincinnati, Clermont, Harrison, Hamilton, Little Miami, Newtonsville, Reily, Shandon, and Williamsburg.

⁴ Ohio Adm. Code 4901:1-5-08(D)(1)(a) ("Rule 8(D)(1)(a)").

⁵ Ohio Adm. Code 4901:1-5-08(D)(1)(b) ("Rule 8(D)(1)(b)").

⁶ Ohio Adm. Code 4901:1-5-08(D)(2) ("Rule 8(D)(2)").

⁷ Application at 1. CBT's exchanges are Bethany, Bethel, Cincinnati, Clermont, Harrison, Hamilton, Little Miami, Newtonsville, Reily, Seven Mile, Shandon, and Williamsburg.

⁸ CBT filed the trouble report data under seal. OCC obtained the data through a protective agreement with CBT. These Comments will discuss the trouble report data only in general terms.

⁹ See Supplemental Documentation at 2.

Although Governor Strickland declared a state of emergency for Ohio due to the windstorm,¹⁰ CBT noted that “the declaration did not specifically identify the time period over which it was to be in effect.”¹¹ CBT also submitted out-of-service report data for the same timeframe for the years 2005, 2006 and 2007 “to demonstrate the days that it met the 300% increase in out-of-service reports branch of the rule.”¹² CBT, thus, limited the application of Rule 8(D)(1)(b) to September 14 – the day of the windstorm – and applied the 300% standard of Rule 8(D)(1)(a) to the September 15-19 timeframe.¹³

Hence, CBT narrowed its waiver request to only those days in which an exchange experienced a 300% increase in out-of-service trouble reports over the exchange’s three-year average. CBT withdrew the following exchanges for the specified dates:

- ▶ Harrison, Newtonsville, Reily, Shandon and Williamsburg for September 14;
- ▶ Newtonsville for September 15;
- ▶ Cincinnati and Reily for September 17;
- ▶ Bethany, Cincinnati, Clermont, Harrison, Newtonsville, Reily, Shandon, and Williamsburg for September 18; and
- ▶ All exchanges for September 19.¹⁴

A review of the trouble report data submitted in the Supplemental Documentation shows that CBT’s proposal seems reasonable. The data show that CBT had more than ten out-of-service trouble reports in some exchanges during the September 14-19 timeframe and beyond. Thus, under Rules 8(D)(1)(b) and 8(D)(2), CBT could assert that

¹⁰ Application at 1.

¹¹ Supplemental Documentation at 2.

¹² Id.

¹³ Id. at 3.

¹⁴ See id. at 2-3.

it qualified for a “grace period” for several more days than it is seeking. But the data also show that several exchanges had more than ten out-of-service trouble reports on a regular basis during the same period over the three previous years. As a result, it is difficult to determine how long CBT had to deal with the effect of the windstorm, which was a one-day event.

It is reasonable for CBT to apply Rule 8(D)(1)(b) to September 14 only, and to apply Rule 8(D)(1)(a) to the September 15-19 timeframe. The Commission should accept CBT’s application of the rules, with one modification. Rule 8(D)(2) requires that, in order to qualify for a “grace period,” an exchange must have **more than** ten out-of-service trouble reports on a given day, not **at least** ten, as CBT asserts.¹⁵ CBT is asking for a “grace period” for one of the ten remaining exchanges on September 17, even though the exchange had just ten out-of-service trouble reports on September 17. Thus, the exchange does not qualify for a “grace period” for that day and CBT should pay the affected customers any credits owed to them.

Respectfully submitted,

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¹⁵ See id. at 2.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Comments by the Office of the Ohio Consumers' Counsel was sent by First Class United States Mail, postage prepaid, to the persons listed below on this 13th day of November 2008.

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel