

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cincinnati Bell Telephone Company LLC for Approval of a Pole Attachment Rate Agreement.) Case No. 10-691-TP-UNC)

ENTRY

The Commission finds:

- (1) On May 21, 2010, Cincinnati Bell Telephone Company LLC (CBT) filed an application for approval of a negotiated pole attachment rate agreement (Agreement). Pursuant to Rule 4901:1-24(D), Ohio Administrative Code (O.A.C.), CBT filed a redacted version of the Agreement in the public record and three unredacted copies under seal. With its application, CBT filed a motion to protect from public disclosure certain information contained in the Agreement. Among other matters, the Agreement does not disclose the name of the other party to the agreement (the attachee).

The Agreement provides a term of seven years beginning January 1, 2007, and ending on December 31, 2013. The Agreement will expire on December 31, 2013, unless the parties agree in writing to extend or modify it. The Agreement establishes the pole attachment rates and the terms of payment. The parties have agreed that if CBT files an application to change its tariffed pole attachment rates during the term of the Agreement, the pole attachment rate contained in the Agreement shall prevail and remain in effect.

- (2) Rule 4901:1-6-17(G), O.A.C., states that a "[c]ontract must not foreclose the customer from disclosing the terms and conditions of the contract." Although the attachee agrees to refrain from disclosing the terms of the Agreement, the parties jointly request that the rule be waived. Taking into account that the parties are experienced in the subject matter of this Agreement and that they are represented by competent counsel, the Commission shall grant the parties requested waiver of Rule 4901:1-6-17(G), O.A.C.
- (3) To protect from public disclosure certain terms in the Agreement, CBT filed a motion for protective order. The

Agreement emphasizes that the negotiated, compromise rates incorporated into the Agreement are sensitive, confidential, and proprietary information. The Agreement states that it is essential that the Commission grant the motion for protective order that accompanies the Agreement. CBT notes that both parties to the Agreement support the motion for protective order. CBT points out that Rule 4901:1-6-17(D), O.A.C., allows the redaction of customer identifying information such as the customer's name and business address.

- (4) In the memorandum in support of its motion for protective order, CBT explains that it has been in settlement talks that have led to a negotiated agreement that will apply to CBT and another party for the period January 1, 2007, through calendar year 2013. With its motion for protective order, CBT seeks, in particular, the confidential treatment of negotiated price terms. CBT argues that the information that it seeks to protect meets the criteria of a trade secret under Section 1333.61(D), Revised Code.

CBT points out that settlement documents in complaint cases are not typically filed with the Commission. Referring to Section 4905.31, Revised Code, and Rule 4901:1-6-17, O.A.C., CBT believes that the parties must submit their negotiated pole attachment rate agreement to the Commission for approval. In further support of its motion, CBT notes that the Commission's staff has been aware of the negotiations and recognizes that the negotiated rate is a reasonable compromise resolution.

- (5) The motion for protective order should be granted. Rule 4901-1-24(D), O.A.C., states in pertinent part that "[u]pon motion of any party...with regard to the filing of a document...the commission may issue any order which is necessary to protect the confidentiality of information contained in the document...." Upon review of the material, the Commission finds that the information that CBT seeks to protect is competitively sensitive information. The Commission, therefore, finds that the information should be protected as trade secret information for a period of 18 months pursuant to Rule 4901-1-24(D)(4), O.A.C.
- (6) The Agreement shall be approved. It appears that the parties have reached a tenable agreement. Notwithstanding approval

of this Agreement, the Commission shall retain continuing jurisdiction to adjudicate any terms which either party may raise in dispute.

It is, therefore,

ORDERED, That the pole attachment agreement be approved in its entirety. It is, further,


ORDERED, That, in accordance with Finding (5), CBT's motion for protective order be granted and, pursuant to Rule 4901-1-24(D)(4), O.A.C., shall remain in effect for a period of 18 months from the date of this entry. It is, further,

ORDERED, That a copy of this entry be served upon CBT, its counsel, and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella



Valerie A. Lemmie




Steven D. Lesser

Cheryl L. Roberto

LDJ/vrm

Entered in the Journal

JUL 14 2010


Renee J. Jenkins
Secretary

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