BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of a Retail Pricing Plan Which May Result in Future Rate Increases and For a New Alternative Regulation Plan.	)))))	Case No. 96-899-TP-ALT

SECOND ENTRY ON REHEARING

The Commission finds:

(1) On November 4, 1999, the Commission issued a supplemental opinion and order addressing the total element long run incremental cost (TELRIC) issues that had been bifurcated from Cincinnati Bell Telephone Company's (CBT) alternative regulation plan. CBT's alternative regulation plan was approved by opinion and order dated April 9, 1998. The TELRIC rates approved in this proceeding establish prices for unbundled network elements (UNEs) to be charged by CBT to competitive new entrant carriers (NECs). The establishment of TELRIC prices for the provisioning of UNEs is required pursuant to the Telecommunications Act of 1996 (1996 Act), and in accordance with this Commission's local service guidelines approved in Case No. 95-845-TP-COI.

(2) On December 6, 1999, applications for rehearing were filed by CBT and jointly by AT&T Communications of Ohio, Inc., MCImetro Access Transmission Services, Inc., and CoreComm Newco, Inc. (intervenors). CBT requests rehearing on seven separate issues and the intervenors raise five issues for which they seek rehearing. Memoranda contra were filed on December 16, 1999 by CBT and the intervenors.

(3) CBT's first alleged error is that the cost of capital ordered by the Commission does not comply with the requirements of the Commission's local service guidelines and the FCC's First Report and Order, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 96-325 (*FCC First Report and Order*). CBT argues that, in establishing the TELRIC cost of capital, the Commission failed to start with the company's authorized rate of return before making adjustments, and

because of methodological errors in the cost of capital analysis that do not comply with TELRIC principles. CBT also requests that the cost of capital should be updated to reflect current market conditions. At a minimum, CBT suggests that rehearing is warranted on this issue because it has discovered mathematical errors with staff witness Chaney's underlying calculations.

As the intervenors point out, the 11.25 percent figure which CBT asserts is its most recent authorized rate of return is actually the generic default rate of return adopted by the FCC in 1990 for establishing interstate access charges. Thus, it would be unreasonable for the Commission to use this rate of return as the staring place for establishing the TELRIC cost of capital in this proceeding, especially where, as here, we have the benefit of recent company-specific cost of capital analyses based on market data. We agree with the intervenors that it would be inappropriate to simply adjust the last authorized rate of rate of return by a factor that attempts to capture increased competitiveness, while ignoring all of the other factors that have changed over the past decade. Indeed, the record reflects that a number of events have caused CBT's overall cost of capital to decrease, notwithstanding increases in the business risks faced by CBT. For example, long-term treasury bond yields have fallen 300 to 400 basis points since 1990 (*See*, MCI/AT&T Ex. 3, at 52-53; MCI/AT&T Ex. 4, at 19) and CBT's cost of debt (7.07 percent) is significantly lower than was observed in CBT's last full rate case (8.82 percent) or the cost of debt implicit in CBT's original alternative regulation proceeding (8.46 percent). *See*, Staff Ex. 8, at 2; Staff Ex. 8, Sched. 1; *Cincinnati Bell*, Case No. 84-1272-TP-AIR (October 29, 1985); *Cincinnati Bell*, Case No. 93-432-TP-ALT (May 5, 1994). As indicated in our opinion and order (at page 12), "the forward-looking cost of capital does not assume the presence or absence of competition but, rather, it reflects the market's current expectations regarding the impact of competition now and into the future."

With respect to our acceptance of the staff's book capital structure, we continue to believe that our decision was appropriate and supported by the record. As indicated in the opinion and order (at page 13), the staff's capital structure approximated the midpoint of Mr. Hirshleifer's proposed range. MCI/AT&T witness Hirshleifer explained that there is no observable capital structure, either market or book, for a company

engaged solely in the business of leasing unbundled network elements (Tr. XII, 84-85). As the intervenors point out, because a monopoly business can support more debt than a highly competitive business, it is reasonable to assume that CBT's capital structure would contain a higher debt ratio if its UNE business were operated as a stand-alone entity. Thus, using the book capital structure advocated by the staff (which contains no adjustment for the risks of competition), as a proxy for the capital structure of the UNE leasing business, is fair and reasonable.

We turn next to CBT's claim that the Commission erred by failing to apply the flotation cost adjustment to all of CBT's common equity. The staff recommended that the 3.5 percent adjustment should be limited to the portion of CBT's common equity balance raised externally to recognize that there are no issuance costs associated with retained earnings (Staff Ex. 8, at 5-7). We agree with the staff's recommendation. As the intervenors argue, in a TELRIC case the Commission attempts to establish a forward-looking cost of capital that includes an assessment of the risk of the business of the company. Since the market will include an assessment of that risk via an evaluation of prospective cash flows, including issuance costs, there is no need to apply the flotation cost adjustment to the entire equity component of the capital structure.

The next request made by CBT with respect to the Commission's cost of capital analysis is that the company should be permitted to update its cost of capital with the most current data available. Although the Commission has traditionally accepted the most current data available in setting the authorized rate of return in rate proceedings, we have never found that an applicant utility should be permitted to recalculate its cost of capital based on data that becomes available after the Commission has issued its order. The most current data available is accepted during the course of the hearing process, but not after the Commission has rendered its decision in the case. If we were to accept CBT's proposal in this proceeding, the process would lack finality and parties would be continually seeking to challenge the other parties' cost of capital updates.

We also disagree with CBT's request to correct "mathematical errors" in staff witness Chaney's DCF analysis. CBT alleges

that Mr. Chaney's calculation of the second-stage growth rate used in his three-stage DCF model was incorrect, an error which CBT claims resulted in understating CBT's overall cost of capital by 21 basis points. As the intervenors point out, CBT's identification of this alleged error comes too late, given the fact that CBT had ample opportunity to cross-examine Mr. Chaney regarding his calculations, or to present rebuttal testimony describing how the staff's calculation was in error. CBT provides no cite to the record evidence in support of its allegation. Indeed, a review of the record evidence in this case shows that there is nothing in Mr. Chaney's direct testimony to support the contention that an error has occurred. Nor is there any evidence in the transcript of Mr. Chaney's cross-examination testimony that would indicate that an error had occurred. Finally, no rebuttal testimony was presented by any party that suggests Mr. Chaney made an error in any of his calculations. In sum, from reviewing the record in this case, it is not possible to substantiate CBT's claim. The Commission is, therefore, unable to conclude that its acceptance of Mr. Chaney's proposal is unreasonable. Even if the Commission were to grant rehearing and take additional evidence, Section 4903.10, Revised Code, specifically prohibits the Commission from taking, on rehearing, "any evidence which, with reasonable diligence, could have been offered upon the original hearing." Obviously, the checking of mathematical calculations of a witness prior to the hearing is something that should occur with reasonable diligence. Rehearing is denied on CBT's cost of capital arguments.

(4) The second error alleged by CBT is that the utilization (fill) factors adopted by the Commission for loop distribution and loop electronics are unreasonable because they are not supported by competent evidence and because they do not allow CBT to recover its costs of providing unbundled loops to competitors. CBT argues that the FCC's TELRIC methodology and this Commission's local service guidelines require the use of reasonably accurate fill factors (estimates of the proportion of a facility that will be filled with network usage). According to CBT, the Commission's adoption of the staff's fill factor recommendation fails to recognize CBT's efficient practice of designing its network to accommodate two pairs to serve every household. CBT claims that this network design practice minimizes the total overall costs of providing local service by avoiding the need to incur additional costs of reinforcing distribution plant. CBT plans to use the same design

criteria into the future that it has employed in the past and the company claims that there is no reason to believe that future network usage would vary materially from current fill rates. CBT contends that adoption of the staff's loop distribution fill recommendation (essentially an average of CBT's and the intervenors' proposals) rewards the intervenors' unreasonably high fill recommendations. With respect to loop electronics, CBT argues that the staff failed to provide any engineering basis for its recommendation that the fill factor for DLC electronic equipment should be the same as interoffice electronic circuit equipment. CBT claims that it is reasonable to expect that interoffice facilities will generate higher fills than loop plant because loop facilities serve distinct geographic areas that are dependent on the demand in a localized area (compared to interoffice facilities that can aggregate large amounts of traffic more efficiently). CBT requests that its proposed fill factors be adopted because they are the only fills supported by the record and consistent with TELRIC methodology.

As we stated in the opinion and order (at page 27), the fill factors advocated by CBT are based on the company's historical network engineering and deployment practices and do not reflect a forward looking approach for operating an efficient network in a competitive environment. Given the FCC's TELRIC methodology[1] and this Commission's local service guidelines[2], we found that CBT's loop design policies and practices reinforce the "embedded" nature of its proposed fill factors. In adopting the staff's loop distribution and electronics fill factor recommendation, we accepted the rationale set forth in Mr. Francis' testimony that the staff's proposal represents a forward-looking view of the portion of CBT's facilities that will be filled with network usage. As stated in the opinion and order (at pages 23-24), we agreed with the staff that competition through resale and UNE loops should increase fills on a forward-looking basis because NECs will market their services in competition with CBT, thereby increasing the likelihood that CBT's network utilization would be increased.

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1 In its *First Report and Order, supra,* at Paragraph 685, the FCC stated that "the forward-looking pricing methodology for interconnection and unbundled network elements should be based on costs that assume that wire centers be placed at the incumbent LEC's current wire center locations, but that the reconstructed network will employ the most efficient technology for reasonably foreseeable capacity requirements."

2 Local Service Guideline V.B.4.b.8 requires incumbent LECs to develop and justify "reasonably accurate fill factor(s)" for purposes of their TELRIC studies. This rule defines fill factors as "the proportion of a facility that will be filled with network usage."

Mr. Francis also pointed out that network utilization will likely increase due to increasing demand for internet services, fax machines, and automatic teller machines (Staff Ex. 4, at 26-27). Although the intervenors offered an alternative proposal on brief and rehearing, the alternative was not tested through cross-examination on the record and, for the same reasons set forth above regarding CBT's cost of capital argument, we do not believe it would be appropriate to adopt a recommendation that was presented after the close of the hearing record.

With respect to interoffice facilities and the associated electronic equipment, we agree that Ms. Soliman's recommendation is consistent with this Commission's local service guidelines (V.B.4.b.8) and the FCC's *First Report and Order* (Para. 682) because the staff's proposal reflects a reasonably accurate assessment of the facilities that will be filled with network usage during the study period (Opinion and Order, at 22). We also believe that adoption of the staff's recommendation to use the same fill factor for loop and interoffice electronics is reasonable because the same technologies are used for both (*i.e.*, the digital loop carrier [DLC] system used in the feeder portion of the loop is OC-3 SONET technology), and the technologies are used in similar ways (*See*, MCI Ex. 22, at 8). We believe that the staff's fill factor recommendations are reasonable and supported by valid record evidence. CBT's request for rehearing on this issue is denied.

(5) In its third alleged error, CBT argues that the Commission unreasonably rejected CBT's nonrecurring rate for line connection charges by failing to allow CBT to recover the cost of additional work necessary to provide competitors with access to local loops on which live telephone service is being provided. CBT contends that the Commission's adoption of the staff's recommendation fails to recognize the additional labor necessary to connect an existing customer's loop to a NEC's facilities. For a new unbundled loop, on the other hand, CBT claims no similar service coordination is necessary because there is not a live customer whose service would be interrupted. CBT argues, therefore, that it was improper for the Commission to adopt the same labor time for the line connection and new loop establishment charges.

We disagree with CBT's arguments on this issue. As stated in the opinion and order (at pages 27-28), we adopted the staff's recommendation based on CBT's failure to justify the

significantly greater time and expense alleged to be necessary to cut over migrating customers compared to connecting new loops. We found Mr. Mette's explanation, that some unspecified number of technicians must travel to a central office to cut over service to the NEC, was insufficient to justify a work time cost that is four times greater than the time required to connect new loops. CBT has not raised any new arguments that would persuade us that the staff's recommendation was unreasonable. We, therefore, uphold the decision that the work time estimate for connecting an existing loop should be the same as used in the nonrecurring rate for non-existing loops.

(6) CBT's fourth alleged error is that the Commission unreasonably required the company to conduct time and motion studies to justify the work times used in CBT's nonrecurring cost studies. CBT opposes such studies as being overly intrusive and costly to perform. CBT claims that this process may require the company to hire special consultants or personnel solely for the purpose of measuring and recording activities. CBT asserts that its nonrecurring work times are a matter of record in this case and no party has suggested alternative work times for any of the defined tasks. CBT suggests that adoption of the staff's recommendation on this issue fails to recognize that CBT's subject matter experts are experienced in their areas and that these employees have provided reasonable time estimates for completion of nonrecurring activities associated with unbundled services. CBT recommends that, if the Commission does not reverse its decision on this issue, the costs of the time and motion studies should be included in the TELRIC studies.

As stated in the opinion and order (at page 30), we agree with the staff that CBT should conduct time and motion studies to quantify accurately the specific tasks required to process and fill UNE orders from NECs. The staff's recommendation is consistent with the testimony provided by MCI witness Starkey and CoreComm witness Gose, both of whom criticized the unreasonable labor time estimates incorporated into CBT's cost studies (MCI Ex. 21, at 54; CoreComm Ex. 2, at 45-56). Contrary to CBT's concerns, we do not believe that timing specific tasks related to these various functions is an onerous burden on the company and, in any event, an estimation of labor costs based on actual observations of employees performing the work is superior to CBT's proposal. We also reject CBT's

request that it be permitted to recover the costs of conducting the time and motion studies in its nonrecurring charge. We do not believe that such costs are incremental to the cost of the network elements and recovery in the company's nonrecurring charge is, therefore, inappropriate. Rehearing on this issue is denied.

(7) The fifth error claimed by CBT is that the Commission unreasonably required CBT to weight its loop sample data using 80 percent business line characteristics and 20 percent residence line characteristics. CBT contends that this weighting fails to reflect the total output of loop elements, as required by the Commission's local service guidelines and TELRIC methodology, and unreasonably skews the average cost of providing unbundled loops downward. CBT argues that no party presented any evidence why the total population of loops should not be used. CBT claims that there is no basis for accepting the staff's recommendation that actual loop populations should be used only if the West 7th central office is recognized as a separate rate band. According to CBT, adoption of the staff's recommendation is a results-driven decision that is inappropriate in a TELRIC proceeding. CBT asserts that there are numerous parameters in its cost studies that will have to be changed in order to implement the Commission's decision on this issue, almost all of which will cause downward pressure on the ultimate rates.

In the opinion and order (at pages 31-32), we described the basis for our decision to adopt the staff's recommendation that, if a separate rate band for the West 7th central office was not established, CBT's original 80 percent/20 percent business/residential weighting should apply (Staff Ex. 4, at 46; MCI Ex. 20, at 8-9). Staff witness Francis agreed with MCI witness Starkey that, because of its unique characteristics, the West 7th office should be separated into its own rate band if the Commission adopts CBT's revised proposal to develop an average loop cost for each rate band by weighting the business and residence loop costs using the total universe of loops that CBT provides. CBT has not raised any new arguments that were not previously considered. We do not agree that adoption of the staff's recommendation was a results-driven decision. Rather, as indicated in the order, we recognized that the change in the weighting proposed by the company would drive the cost study results away from the actual costs of providing loops provisioned from the West 7th office.

Accordingly, we determined that the original 80/20 weighting should be adopted. Rehearing on this issue is denied.

(8) The sixth alleged error is that the Commission unreasonably ignored evidence provided by CBT in support of its miscellaneous investment in loops. According to CBT, the company developed its unit cable investments by adding up the costs of the specific components required to install the cable. CBT added a 10 percent factor to capture the miscellaneous costs that were not itemized on a unit basis because the company claims that some costs are simply too small to identify individually or do not occur on every installation. CBT identified examples of these types of costs as shipping and warehousing costs, cutting custom cable lengths, weather-related job interruptions, easement costs, and garage time costs. CBT claims that the Commission's elimination of the 10 percent miscellaneous factor failed to recognize the testimony provided by Mr. Mette that supported the markup. CBT further argues that, if the Commission continues to exclude the 10 percent miscellaneous markup, the company should be permitted to reduce the denominator of the calculations it used to determine its annual charge factors (ACFs) by 10 percent, in order that the ACFs and capital accounts are projected on the same going forward basis.

As indicated in the order (at pages 34-35), we agree with the staff and intervenors that CBT has not adequately supported its proposal to impose a 10 percent miscellaneous markup on its cable investment. CBT claimed that this markup is necessary to account for items such as transportation and taxes on material plus additional costs associated with garage time and job interruption. Although CBT witness Mette testified in support of the markup, we found that the rationale offered by the staff and intervenors was more persuasive. MCI witness Starkey stated that the basis of the markup was simply an assumption made by CBT (MCI Ex. 20, at 44-45). Moreover, CoreComm witness Gose testified that, contrary to CBT's claims, positive cost savings, such as unanticipated productivity, good weather, and diminished needs for cable splicing, can produce significant cost savings that will offset the need for a miscellaneous markup (CoreComm Ex. 2, at 42). CBT also argues that the denominator of the calculations used to determine ACFs should be reduced by 10 percent to account for the exclusion of the markup from the cable capital investment account. We agree with the intervenors that CBT has been

aware of the staff's recommendation to exclude the markup since the issuance of the Staff Report in 1997. CBT could have raised this alternative argument before the rehearing phase of the proceeding when the opportunity to test CBT's position would have been available to opposing parties. We decline, at this stage of the proceeding, to adopt CBT's alternative argument. Rehearing is denied.

(9) CBT's seventh alleged error is that the Commission unreasonably rejected CBT's cost study for the directory assistance (DA) listing database and adopted inapplicable FCC proxy rates for subscriber listing information. CBT contends that the Commission improperly accepted the intervenor witness' criticism of the allocation of expenses between directory production and DA database maintenance. CBT argues that MCI witness Starkey arbitrarily assumed five carriers would be sharing the database, thereby reducing the rate to be charged for access to the DA database. CBT recommends that, at a minimum, the Commission should have adopted the staff's recommendation on this issue, which assumed that the demand would be spread over four carriers instead of the three carriers assumed by CBT. CBT also contends that the Commission's adoption of the FCC's proxy rate for subscriber list information will not allow CBT to fully recover the costs associated with providing the service. According to CBT, the "presumptively reasonable" rates established by the FCC were not intended to apply to the DA database. CBT states that those rates were established for purposes of pricing subscriber list information used by directory publishers, not for DA databases used by competing carriers to provision DA. CBT concludes that the Commission should have indicated which part of CBT's DA cost study was done incorrectly instead of relying on a FCC proxy rate.

We disagree with CBT's arguments on this issue. As set forth in the opinion and order (at pages 64-67), we believe MCI witness Starkey identified appropriate concerns with the DA database costs proposed by CBT. We stated that the difference in the level of costs between CBT's proposal and DA costs for such services in other states was an important indicator that CBT's DA costs should be rejected in this case. For example, a review of publicly available costs for DA services in New York and Texas revealed levels that were several thousand percent less than the DA costs sought by CBT. Although we agreed with many of the intervenors' criticisms of CBT's proposal, we

did not adopt their DA rate recommendation. Instead, we accepted a recent "presumptively reasonable" rate level of $0.04 per subscriber listing and $0.06 per updated listing that had been established by the FCC for directory publishing and directory assistance[3]. Although these rates are still significantly higher than the DA rates adopted in Texas and New York, we believe they achieve a reasonable compromise between the rates proposed by CBT and those recommended by the intervenors. We also believe that the DA rates adopted in the opinion and order fairly recognize the fact that CBT operates in a smaller service territory than the companies in New York and Texas while, at the same time, giving recognition to the likelihood that an increasing number of carriers are likely to enter CBT's market in the future. Rehearing on this issue is denied.

(10) The intervenors' first alleged error is that the Commission improperly adopted fill factors for copper feeder and distribution which are unsupported by the record. The intervenors argue that adoption of the staff's recommended fills is unreasonable because the staff's proposal was arbitrarily based on the mid-point of the other parties' recommendations and on fill factors established by other state commissions. The intervenors recommend that the Commission should, instead, adopt an alternative fill factor proposal that would take into account growth rates over the life of copper distribution and copper feeder assets. The intervenors claim that this proposal is consistent with the recommendation made by Dr. Ankum that assumed average fill factors for copper distribution and feeder cable over a given period of time.

As discussed above, CBT claimed that the fill factors adopted in the opinion and order were too high. The intervenors, on the other hand, argue that the staff's recommended fills were unreasonably low. In rejecting the opposite extremes recommended by CBT and the intervenors, we concluded that the staff's fill factor recommendations represent a reasonable middle ground estimation of CBT's forward-looking fills. With respect to the intervenors' alternative proposal for copper distribution and feeder fills, we do not believe that it is appropriate to adopt a recommendation that is being presented for the first time in an application for rehearing. The

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3 *Third Report and Order in CC Docket No. 96-115, Second Order on Reconsideration of the Second Report and Order in CC Docket No. 96-98, and Notice of Proposed Rulemaking in CC Docket No. 99-273* (Released September 9, 1999).

intervenors' "alternative" fill factor proposal is simply the product of a calculation made by the intervenors without the benefit of cross-examination on the record. As stated in the opinion and order (at page 24), the record in this case indicates that CBT's proposed fill factors are based on an under-utilized network, while the intervenors' fill recommendation appears to overstate the reasonable expectation of what portion of CBT's network will be utilized. The intervenors' request for rehearing on this issue is denied.

(11) The second error alleged by the intervenors is that the Commission did not adopt consistent fill factors for feeder and SONET electronics. The Commission adopted staff witness Soliman's recommendation on fills for interoffice transport facilities and equipment and for SONET equipment fills. Ms. Soliman's acceptance of CBT's lower SONET (OC-n rings) fill recommendation was based on her view of SONET being a relatively new technology that CBT uses mainly for interoffice transport where moderate competition by other providers exists (Staff Ex. 3, at 24-27). According to the intervenors, the fills for SONET equipment used in the interoffice network should be at least as high as the fills in the loop plant.

We disagree with the intervenors' arguments on this issue. As Ms. Soliman stated in her testimony, the staff's recommendation is consistent with this Commission's local service guidelines (V.B.4.b.8) and the FCC's *First Report and Order* (Para. 682) because the recommended fills reflect a reasonably accurate proportion of the facilities that will be filled with network usage during the study period. Both this Commission and the FCC require ILECs to provide estimated investment adjusted to reflect the portion of the network facility that will be filled with usage during the study period, not the portion of the network facility that can be filled or that is currently filled with network usage (*Id.* at 28-29). We believe that the staff's proposal for interoffice facility fill factors properly reflects our local service guideline standards and the FCC's rules and we, therefore, reject the intervenors' request for rehearing on this issue.

(12) The intervenors' third alleged error is that the Commission approved loop qualification and conditioning charges proposed by CBT. The intervenors claim that application of these charges is anti-competitive and discriminatory, and that the level and rate structure of the charges does not comply with

TELRIC principles and FCC orders. The intervenors argue that, from a TELRIC viewpoint, any qualification and conditioning charges that would be incurred by CBT on a short-run basis have already been included in the monthly recurring charge for the loop. The intervenors also contend that loop conditioning charges are not in compliance with TELRIC principles because such charges are not based on forward-looking economic cost principles. Finally, the intervenors assert that loop qualification and conditioning charges discriminates among and against NECs because, if a NEC's customer returns to CBT, CBT will reap the benefit of a loop that has already been conditioned. As stated in the opinion and order (at pages 28-29), the FCC's *First Report and Order* (Para. 382) requires ILECs to provide digital loop functionality, such as ADSL, when requested by a NEC. The FCC's order further provides that when such a service is requested by a NEC, and the loop is not currently conditioned to carry digital signals (but it is technically feasible to condition the facility), the ILEC must condition the loop to permit the transmission of digital signals (*Id.*). However, the FCC's order also specifically provides that the requesting carrier would "bear the cost of compensating the incumbent LEC for such conditioning" (*Id.*). With respect to the argument that CBT will unfairly reap the benefit of an already conditioned loop, the same risk flows in both directions. For example, if CBT were to condition a loop for one of its own customers, and that customer subsequently became a customer of a NEC, the NEC would have the benefit of an already conditioned loop without incurring the associated conditioning costs. Upon reconsideration, however, we agree with the intervenors and the staff that CBT's proposed qualification charge should not be approved. Staff witness Francis stated that CBT's lack of knowledge of which loops may or may not need to be conditioned should not result in a loop qualification charge being imposed on competitors (Staff Ex. 4, at 18). According to the staff, the qualification of loops could have been a type of inventory function developed by CBT to identify the type and location of any loop at any given time (*Id.*). We agree with the staff that loop qualification is not a function of physically conditioning a loop or specifically removing load coils. Therefore, we agree with the intervenors that CBT's loop qualification charge should be eliminated.

Further, with respect to the issue of loop conditiong charges, we believe that CBT should develop a proposed recurring

charge for loop conditioning in order to facilitate the ability of new entrants to order conditioned ADSL loops in a manner that is not cost prohibitive. We will not order CBT to implement the recurring charge, at this time, because, for the reasons stated above regarding CBT's cost of capital argument, we do not believe it would be appropriate to adopt a recommendation that was presented after the close of the hearing record. CBT should submit this proposed recurring charge rate structure with its compliance filings.

(13) The fourth alleged error raised by the intervenors is that the Commission unreasonably found the rates developed by CBT for cross connects in the West 7th central office to be in compliance with TELRIC principles and FCC orders. According to the intervenors, CBT's TELRIC study for cross-connect charges contained inappropriately high costs for the West 7th central office due to the distance between the collocation cages and the main distribution frame. The intervenors claim that, instead of using copper facilities to link the collocation cages and the distribution frame, CBT improperly used more expensive SONET fiber transmission equipment.

As discussed in the opinion and order (at pages 61-64), we disagree with the intervenors' claim that CBT's West 7th cross connect configuration was improperly designed in violation of TELRIC principles. CBT established that the configuration of the West 7th office is such that, due to the distance between facilities, cross connects from the collocation area to the CBT mainframe and transport area must be provided with SONET equipment rather than copper (Tr. IV, 111-112). Further, as CBT points out, the FCC's *First Report and Order* (Para. 605) does not require ILECs to lease additional space or provide trunking at no cost where they have insufficient space for physical collocation. Similarly, CBT should not be required to provide uncompensated cross connect facilities that are required due to the configuration of the company's existing central office facilities. The intervenors again cite the FCC's Second Report and Order, *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport*, CC Docket No. 93-162, FCC 97-208 (June 13, 1997), for the proposition that CBT cannot recover the cost of the OC-48 cross connect system in the West 7th central office. As indicated in the opinion and order, the issue addressed by the FCC in that case was whether ILECs could

charge IXCs for repeaters as part of DS1 and DS3 cross connect services. In its decision, the FCC did not rule that collocators did not have to pay for repeaters if the distance between the collocation cage and the mainframe exceeded a certain distance. Nor did the FCC in that case address the necessity or propriety of using SONET technology for cross connects when there is a significant distance between the collocation cages and the mainframe. We agree with CBT that the record established that there was no available space in the West 7th central office for collocation in close proximity to the mainframe. Moreover, the record indicates that, due to this distance between facilities, cross connects could not be provisioned on copper facilities. As stated in staff witness Soliman's testimony, the use of SONET facilities was the most efficient and forward-looking technology to meet the expected demand for cross-connect service in the West 7th central office. Ms. Soliman stated that, based on the information obtained from CBT through a staff data request, she believes that CBT's approach is consistent with the Commission's local service guidelines, the FCC rules, and TELRIC methodology (*Id.* at 40). We agree with Ms. Soliman's recommendation and we, therefore, reject the intervenors' request for rehearing on this issue. Rehearing on this issue is denied.

(14) The intervenors' fifth alleged error is that the Commission did not require CBT to file its compliance runs within a specified period of time and failed to establish a time frame for interested parties to participate in the development of the final rates and CBT's carrier-to-carrier tariff. In addition, the intervenors claim that the Commission erred by not specifying that the rates for the DA database were effective upon issuance of the order.

In the opinion and order (at page 69) the Commission stated that "The TELRIC studies for these [as yet to be filed] services should be submitted by CBT no later than three months from the date of this order, in conjunction with the company's overall compliance filings." Although the order did not specifically direct that the compliance runs on existing studies would be filed at the same time, it was the Commission's intent that both the new cost studies and the compliance runs for the existing studies would be submitted by CBT within three months of the opinion and order (*i.e.*, February 6, 2000). With respect to the DA database, we agree with the intervenors that CBT should not wait until the other compliance

filings are completed to begin offering DA at the rates approved in the opinion and order and reafirmed in this entry. Within 14 days from the issuance of this entry, CBT should make DA available to interested NECs at the approved rates.

As stated in the opinion and order (at page 75), and consistent with the procedure followed in the *Ameritech* TELRIC case, CBT is directed to rerun its TELRIC studies and resubmit them to the participating parties that have signed confidentiality agreements in this proceeding. Given the delay in issuing this rehearing entry, CBT shall be granted until February 28, 2000 to sumit its compliance runs and new cost studies in compliance with the opinion and order. Concurrent with the resubmission of its TELRIC studies, CBT should provide a detailed list of the modifications made in accordance with the opinion and order and this entry on rehearing. The staff should verify that the modifications addressed in the opinion and order and the entry on rehearing have been made. In order to accomplish this directive, the staff is empowered to work with CBT to ensure that the necessary modifications have been made and to clarify, where necessary, the provisions adopted in the opinion and order and the entry on rehearing. once the staff and intervenors have had an opportunity to fully review the compliance run TELRICs, they should provide to CBT questions, concerns, and disagreements with the compliance runs. After CBT has reviewed the submitted questions and concerns, all parties and the staff should meet to work out any disagreements informally. Following the technical conferences, all parties and the staff should meet to work out a stipulated agreement for all issues that have been resolved. For any remaining issues, we will issue a final entry that resolves the dispute and direct CBT to make a final compliance run for all approved TELRICs.

It is, therefore,

ORDERED, That, with the exception of the elimination of the proposed loop qualification charge and the requirement that CBT develop a future recurring charge for loop conditioning, the applications for rehearing filed by CBT and the intervenors are denied for the reasons set forth herein. It is, further,

ORDERED, That CBT is directed to submit its compliance runs and new cost studies by February 28, 2000, to serve copies of these studies on the staff and all participating parties that have entered into protective agreements, and to work with the staff to ensure that the compliance runs and cost studies are in accordance with the Commission's opinion and order and this entry on rehearing. The parties should follow the procedure described above regarding submission and review of the compliance runs. It is, further,

ORDERED, That copies of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Judith A. Jones

Craig A. Glazer

Donald L. Mason

DDN;geb

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A True Copy
Gary E. Agorito
Secretary