

In the Matter of the Application of)
Cincinnati Bell Telephone Company, LLC) Case No. 11-1339-TP-ATA
for a Determination Pursuant to Ohio)
Revised Code 4927.12(C)(3).)

**MEMORANDUM OF CINCINNATI BELL TELEPHONE COMPANY LLC
IN OPPOSITION TO MOTION TO SUSPEND AND INITIAL COMMENTS
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. Introduction.

Cincinnati Bell Telephone Company LLC (“CBT”) filed its application for approval of a Lifeline Recovery Surcharge with the Commission on March 18, 2011. Pursuant to Ohio Admin. Code § 4927:1-6-19(P)(1), the Application is subject to automatic approval if the Commission does not act otherwise within thirty-one days. On April 5, 2011, the Office of the Ohio Consumers’ Counsel (“OCC”) moved to intervene and to suspend the Application. The OCC also filed comments in opposition to the Application. As shown herein, the OCC’s request for suspension and objections to the Application are without merit. The Commission should permit CBT’s Application automatically to go into effect.

II. There Is No Reason To Suspend The Application.

While the OCC did not have access to the confidential data in CBT's filings at the time of its motion, it received the confidential data almost immediately after the execution of a Protective Agreement on April 6, 2011, the first day after it moved to intervene in this proceeding. The only data that had been redacted from CBT's public filing was: 1) the number of Lifeline customers in each of its exchanges and rate bands; 2) the products obtained by multiplying those quantities by the CBT-funded discount amounts; and 3) the total quantity of

non-Lifeline access lines. The exact discount amount per Lifeline customer for each exchange and rate band was fully visible in the public filing, so the OCC had access to that information when it made its filing. Now that the OCC has all of the data, all that remains for OCC to verify is that CBT accurately multiplied the Lifeline customer quantities by the discount amounts and divided that total by the number of non-Lifeline access lines. It should only take a matter of minutes to do that simple arithmetic and verify that CBT's calculation of the \$0.35 surcharge is accurate. There is no need to suspend the application to allow the OCC to verify that math (the Commission has been able to verify the calculations for itself since their receipt on March 18, 2011).

III. CBT's Proposed Surcharge Is Fully Authorized By Law.

CBT's Lifeline Recovery Surcharge would only collect from customers precisely what the statute allows: "any lifeline service discounts and any other lifeline service expenses that the public utilities commission prescribes by rule and that are not recovered through federal or state funding, except for expenses incurred under division (A)(3)(a) of this section." Ohio Revised Code § 4927.13(D) (emphasis added). The Commission's rule, Ohio Adm. Code 4901:1-6-19(P), is equally clear that the full Lifeline discount may be recovered in the surcharge:

An ILEC ETC may recover through a customer billing surcharge on retail customers of the ILEC's telecommunications service other than lifeline service customers, **any lifeline service discounts** and any other lifeline service expenses **that are not recovered through federal or state funding** and that are approved by the commission under this paragraph. The surcharge may not include recovery of expenses related to the marketing and promotion of lifeline service. The surcharge may be established through one of the following means:

(1) An ILEC ETC that chooses to establish a customer billing surcharge to non-lifeline customers, to recover lifeline service discounts and expenses identified in this paragraph shall file a thirty-day application for tariff amendment (ATA). Such application may request recovery of lifeline service discounts that are not recovered through federal or state funding such as federal universal service fund end user charges, service

connection charges, blocking of 900/976, recurring discount maximizing the contribution of federally available assistance, **and recurring retail price differences between the frozen lifeline service rate and residential BLES rates**, as well as lifeline service expenses that are not recovered through federal or state funding such as administrative expenses for the sole purpose of verifying the eligibility and enrolling of lifeline customers. An applicant must provide documentation to support its proposed surcharge and its compliance with this rule. Absent suspension or other commission action, the application shall be deemed approved and become effective on the thirty-first day or later date if requested by the company.

(Emphasis added.) CBT has limited the recovery sought in its Lifeline Recovery Surcharge to the difference between normal BLES rates and the Lifeline rate in each exchange, less its federal recovery.¹ The OCC has questioned whether CBT is permitted to recover the full difference between its regular BLES rates and Lifeline rates, to the extent that such difference is attributable to rate increases that occurred before the passage of the statute authorizing the surcharge.

With respect to the discount amounts that CBT seeks to recover in the surcharge, the OCC only questions the component that results from the Lifeline price cap under the Commission's previous alternative regulation rules.² The Commission dismissed the same objection in the S.B. 162 rulemaking. There, the Commission rejected the argument raised by a consumer coalition led by the OCC ("OPTC") that differences in rates arising from rate freezes applicable to Lifeline customers until January 1, 2012, should not be treated as "discounts or expenses" for purposes of the surcharge. The Commission stated: "We do not agree with OPTC's narrow view of Section 4927.13(D), Revised Code, and believe that the method prescribed and the discounts and expenses identified by staff in the proposed rule are both

¹ The OCC acknowledges that CBT has not requested recovery of any expenses in addition to the service discounts.

² Ohio Admin. Code § 4901:1-4-11, effective Aug. 7, 2006.

appropriate and consistent with the law.”³ The Commission approved the proposed rule which allowed recovery of the “recurring retail price differences between the frozen lifeline service rate and residential BLES rates....”⁴ The Commission made no distinction between such retail price differences that pre-existed S.B. 162 and those that came into being afterwards. The rule permits recovery of *all* recurring retail price differences between the frozen Lifeline rates and BLES rates.

IV. CBT’s Lifeline Recovery Surcharge is Not Retroactive.

CBT is not attempting to use the surcharge to “reach back” and retroactively recover revenue lost prior to the enactment of S.B. 162 and creation of the Lifeline Recovery Surcharge. Retail price differences between Lifeline rates and BLES rates are current, real and ongoing. Nothing in R.C. § 4927.13(D) or Ohio Admin. Code § 4927:1-6-19 differentiates between retail price differences between frozen Lifeline rates and regular BLES rates based on when the differences first came into being. A discount is a discount.

CBT’s proposed Lifeline Recovery Surcharge does not apply R.C. § 4927.13(D) retroactively. A retroactive application of the law would be one that recovered revenue lost prior to the statute’s enactment. But CBT is doing nothing of the sort. CBT’s surcharge addresses only the *current* differences between BLES and Lifeline rates, exactly as the statute and rule allow. The surcharge is calculated only from the current differences between CBT’s BLES rates and its Lifeline rates, using current access line counts.

In addition, as a guarantee that the surcharge will only recover current Lifeline discounts, CBT will be subject to an annual reporting and true-up requirement. If, over the course of any

³ *In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162*, Case No. 10-1010-TP-ORD, Opinion and Order (October 27, 2010) at 30.

⁴ Ohio Adm. Code 4901:1-6-19(P)(1).

year in which the surcharge is in effect, CBT recovers more or less through the surcharge than it actually provided in Lifeline discounts, CBT will be required to apply the difference towards the next year's calculation of the surcharge. The Commission implemented this true-up process in response to OPTC's comments.⁵

Under the PUCO's former alternative regulation rules, CBT was required to freeze its Lifeline rates, even if it increased BLES rates for non-Lifeline customers. CBT was not afforded any mechanism to recover those discounts. The new law is very different and permits CBT to recover the entire Lifeline discount on a going forward basis. For those past time periods CBT completely absorbed the discount as required. The creation of the Lifeline Recovery Surcharge will have no effect on past periods and will not provide CBT with any opportunity to recover discounts from the time period where it was required to absorb them. The OCC's retroactivity argument is baseless and should be disregarded. There is no reason to suspend CBT's application.

⁵ *In the Matter of the Adoption of Rules to Implement Substitute Senate Bill 162*, Case No. 10-1010-TP-ORD, Opinion and Order (October 27, 2010) at 30.

V. Conclusion.

CBT's application is simple, straightforward, and completely within the letter and spirit of R.C. § 4927.13(D) and Ohio Admin. Code § 4901:1-6-19(P). The Commission should allow the application to be automatically approved, as provided under the PUCO's rules.

Respectfully submitted,

/s/ Douglas E. Hart

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on Terry L. Etter and David Bergmann, Assistance Consumers' Counsel, Office of the Ohio Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, OH 43215-34485, via electronic mail, at etter@occ.state.oh.us and bergmann@occ.state.oh.us this 7th day of April, 2011.

/s/ Douglas E. Hart

Douglas E. Hart

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Summary: Memorandum in Opposition to Motion to Suspend and Intial Comments by the Office of the Ohio Consumers' Counsel electronically filed by Mr. Douglas E. Hart on behalf of Cincinnati Bell Telephone Company LLC