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PUBLIC UTILITIES COMMISSION OF OHIO

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Bell Telephone Company for Approval of an Alternative Form of Regulation	))))	**Case No. 93-487-TP-ALT**

OHIO NEWSPAPER ASSOCIATION
SUMMARY OF ISSUES AND
OBJECTIONS TO THE STAFF REPORT

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In accordance with the authority of R.C. 4909.19, O.A.C. 4901-1-28 and the first finding of the April 15, 1994, Entry herein, the Ohio Newspaper Association ("ONA") submits the following summary of issues and Objections to the March 25, 1994, Staff Report of Investigation in this Ohio Bell Telephone Company ("OBT") alternative regulation case.

As provided at O.A.C. 4901-1-28(B) and (C), the Objections relate to the "findings, conclusions or recommendations" in the report and to the "failure of the report to address one or more specific items." These Objections shall frame ONA's issues in this proceeding.

As required by Alt. Reg. Rule IX.C., these Objections shall "specifically designate portions of the report" which ONA considers to be objectionable and shall explain the objection and how the objectionable portion of the report is unjust and unreasonable.[1] Where the Objection relates to the failure of the report to address a specific item, the Objections will cite the source of the staff's or Commission's obligation to address the item.

ONA's issues fall into several categories:

[1]The alternative regulation rules cited in these objections shall be those attached as Appendix 1 to the Commission's March 10, 1993, Entry on Rehearing in PUCO Case No. 92-1149-TP-COI.

(1) OBT's conduct of competitive, unregulated services under the shell of its regulated telephone services company.

(2) OBT's subsidization of competitive, unregulated services by its monopoly and other regulated telephone services.

(3) OBT's refusal to use separate, unregulated subsidiaries to conduct competitive, unregulated businesses, like information services.

(4) OBT's refusal to impute to its competitive, unregulated services the same monopoly telephone service rates that it charges to its competitors.

(5) OBT's refusal to use separate subsidiaries to separate its regulated, common carrier, "conduit" responsibilities under Ohio public utility law from unregulated, information, "content" services.

(6) OBT's refusal to offer to the public the same abbreviated dialing service which it offers to itself to provide information services to the public.

(7) OBT's refusal to offer adequate public access to the self-initiated rate adjustments for which it seeks authority in this proceeding.

(8) OBT's exploitation of so-called Advantage Ohio "commitments" to gain technical and pricing advantages over competitive service providers.

ONA's objections to the Staff Report relate to these issues and are as follows:

1. The Staff Report failed to confine the activities of OBT's regulated telephone utility to the common carrier services delineated by the definition of a regulated telephone utility at R.C. 4905.03(A)(2) and R.C. 4927.01(E).

2. By not requiring OBT to conduct its competitive, unregulated services in separate subsidiaries, the Staff Report condones the conduct of such services under the cloak of OBT's regulated telephone utility. The Staff Report thereby invites the Commission to exceed its telephone regulatory authority under R.C. 4905.03(A)(2) and 4927.01(E) and also burdens the Commission with unnecessary allocative responsibilities under R.C. 4905.33. This will set the stage for cross-subsidization and exploitation of monopoly utility customers to support competitive and unregulated services.

3. The Staff Report compounds the risk of anti-competitive conduct at pages 71-74 by allowing prices for competitive and new services to be set at LRSIC. As admitted by OBT at page 33 of OBT Exhibit 28.0, LRSIC does not recover joint and common costs; and these costs -- along with the historical, embedded costs of older technologies in OBT's public utility telephone plant -- will become residual costs to be borne by OBT's monopoly services. While expressing concern about this threat at pages 34-36, 39, 43, 45 and 83, the Staff Report fails to recommend the safeguard of separate affiliates for diminishing this threat.

4. The Staff Report properly acknowledges at pages 34-36, 39, 43, 45 and 83 the danger of OBT's request to use non-homogenous customer groups for recovering the joint, common and historical, embedded costs not assigned by LRSIC to competitive and new services. However, the Staff Report fails to prohibit this opportunity to exploit monopoly customers and thus fails to implement state and Commission policies against that exploitation.

5. At page 74, the Staff Report erroneously approves OBT's imputation policy by mistakenly concluding that that policy is "to charge itself the same rate it charges an alternative provider." In fact, as demonstrated at pages 26-28 of OBT Exhibit 28.0, OBT

will not "charge itself the same rate it charges an alternative provider." Instead, OBT will hypothecate and impute opportunity costs based upon the inefficiencies of its monopoly services to underprice those monopoly services that OBT uses to advance its own competitive services.

6. At page 83, the Staff Report fails to prohibit the contradiction between OBT's LRSIC pricing of competitive and new services (some of which may be bundled with unregulated activities like information services), and FCC Part 64's mandatory FDC (fully distributed cost) allocation between regulated and unregulated services.

7. The Staff Report failed to consider the cross-subsidization policies of the Commission when it didn't recommend separate affiliates for OBT's competitive services. Alt. Reg. Rule III. C. 9. requires a detailed discussion of cross-subsidization; and page 29 of the Commission's January 7, 1993, Order in Case No. 92-1149-TP-COI expressed the Commission's vital concern about potential cross-subsidization. At page 23 of its March 10, 1993, Entry on Rehearing in Case No. 92-1149-TP-COI, the Commission affirmed its requirement for a detailed discussion of cross-subsidization, including discussion of the establishment of a subsidiary and its relationship to the avoidance of potential cross-subsidization. The Staff Report at pages 43 and 83 ignored this concern and requirement when it condoned OBT's LRSIC pricing and refusal to use separate subsidies for competitive services. The Staff Report thereby empowered the utility to use flexible pricing of monopoly services to subsidize OBT's competitive services. These competitive services may compete with the information services of ONA's member companies.

8. The Staff Report's failure at pages 71-74 to consider whether OBT's LRSIC proposal satisfies the statutory, regulatory and decisional telecommunications policies of this Commission will deny the Commission the Staff Report it needs in order

to carry out its obligations under Alt. Reg. Rule X. B. 2. That rule requires the Commission to consider impacts on competition, compliance with Rule IV. B. policies and R.C. 4927.02 policy goals, and impact on customer bills.

9. At pages 34-35 the Staff Report erred in stating that "a regulatory mechanism that provides the Applicant with the opportunity to engage in limited Ramsey pricing may be appropriate ...". Such a recommendation violates Commission policy and violates both R.C. 4905.33 and the common carrier responsibilities of OBT expressly provided at R.C. 4905.03(A)(2) and 4927.01(E).

10. The Staff Report failed to subject to any burden of proof OBT's LRSIC pricing and refusal to use separate subsidies for competitive services. This burden of proof is as required at pages 5 and 9 of the March 10, 1993, Entry on Rehearing in Case No. 92-1149-TP-COI. As a result, the Staff Report condoned OBT's LRSIC pricing and refusal to use separate subsidies for competitive services, with their potential consequences of cross-subsidies, unjust and unreasonable pricing of essential facilities, and destructive competition against ONA members.

11. The Staff Report at pages 71-74 and 83 erroneously approved OBT's LRSIC pricing methodology (which may be useful only for establishing pricing floors) as a standard to prevent cross-subsidization of competitive services. However, LRSIC pricing does not recover common, joint or historical, embedded costs; and it distorts the application of OBT's cost allocation factors. It thereby guarantees that other services -- including monopoly services -- will have to pay these residual costs and cross-subsidize the competitive services; and thus destroy competition in the telecommunications market, including competition against the information services provided by ONA members.

12. At page 71, the Staff Report accepts OBT's implicit recommendation that common costs not be included in the LRSIC. This will allow a LRSIC price to be set below the actual cost of OBT's service and thereby help OBT -- either by itself or jointly with an affiliate or a stranger -- to destroy information service competition from ONA's member companies.

13. At pages 71-72, the Staff Report accepts OBT's recommendation that joint costs not be included in the LRSIC. This will allow a LRSIC price to be set below the actual cost of OBT's service and thereby help OBT -- either by itself or jointly with an affiliate or a stranger -- to destroy information service competition from ONA's member companies.

14. At pages 71-74, the Staff Report unjustly and unreasonably concludes that OBT's LRSIC costing methodology complies with the Commission's Alternative Regulation Rules and therefore is lawful. There is no final determination of the lawfulness of any Commission rule until it has been actually applied and then reviewed by the Supreme Court of Ohio: Craun Transportation, Inc., et al. v. Pub. Util. Comm. (1954), 162 Ohio St. 9.

15. At pages 71-72, the Staff Report erred and further assured the cross-subsidization of OBT's LRSIC prices for competitive and new services by approving OBT's proposed joint cost test. OBT admits that the joint cost test is not intended to test how joint costs are recovered by individual services. Thus, OBT's joint cost test will enable OBT to spread the joint costs attributable to a competitive or new service to other services (including monopoly services) within the family of services using the joint cost resources.

16. By leaving open the door to OBT's use of Cell 1 monopoly service revenues to subsidize competitive or new services, the Staff Report at pages 71-72 violates

the express finding of the Commission at page 18 of its March 10, 1993, Entry on Rehearing in Case No. 92-1149-TP-COI, that,

> It is our intent that Cell 1 not be responsible for any more than its appropriate overhead costs.

17. By opening the door to OBT's use of Cell 1 monopoly service revenues to subsidize competitive services, the Staff Report at pages 71-72 violates the express finding of the Commission at page 22 of its January 7, 1993, Order in Case No. 92-1149-TP-COI, that,

> Further, the Commission expects that the price of Cell 1 services reflect contribution from services classified in other pricing cells.

18. The Staff Report's approval at pages 71-72 of OBT's joint cost test without any definition of family of services or the methodology of the test will enable OBT to underprice its competitive and new services. For example, OBT's network circuits can carry both video and voice signals. A video transmission signal occupies approximately 700 times as much space in OBT's telephone network as a regular voice grade signal. This is like the difference between an overloaded 18-wheel tractor-trailer and a person riding a bicycle. To allocate joint costs between video signals and voice grade signals on some average basis of minutes of use or number of circuits would result in an under allocation of joint costs to OBT's competitive video transmission services. As a result, monopoly voice transmission services may subsidize OBT's competitive video transmission services.

19. By condoning OBT's inadequate treatment of cross-subsidization and separate subsidiaries and by approving a LRSIC pricing methodology that virtually guarantees that monopoly services will pay for competitive services' common, joint and historical, embedded costs (and expenses based thereupon, using inconsistent cost

allocation factors), the Staff Report has abused the Commission's explicit policy against cross-subsidization and anti-competitive conduct. See in addition to the citations in Objection 7 above, e.g., In Re Implementation of Chapter 4927, Revised Code, Case No. 89-563-TP-COI, at page 19 of the October 22, 1993, Order and page 13 of Appendix A to the December 22, 1993, Entry on Rehearing; In Re United Telephone Long Distance, Inc., Case No. 86-2173-TP-ACE at pages 86-92.

20. In evaluating OBT's LRSIC pricing methodology, the Staff Report at pages 71-74 neither identified nor applied the "higher" "public interest standard" required at page 17 of the Commission's March 10, 1993, Entry on Rehearing in Case No. 92-1149-TP-COI. The Staff Report's approval of OBT's LRSIC pricing methodology violates that higher public interest standard by encouraging cross-subsidies from OBT's flexibly priced, regulated services to OBT's competitive services.

21. The Staff Report of Investigation erred at pages 19 and 20 in approving increased expenses for OBT's affiliated corporations including Ameritech Services, Inc., Bell Communications Research, Inc., Regional Holding Company, and Ameritech Information Services. OBT contradicts itself by proposing price increases based not on the LRSIC pricing it seeks in this case but on the FDC pricing which it rejects in this case.

22. The Staff Report erred at page 44 in not requiring OBT to submit cost studies at the present time for current Cell 2 services instead of allowing OBT to file such studies at the time of a rate change or a change in its pricing levels. As a result of the Staff Report's failure to require OBT to file such cost studies currently, neither staff nor any parties to this proceeding have an ability to analyze the full financial impact of any individual cost study on the overall revenue and expenses of the company.

23. The Staff Report erred at page 44 in not requiring OBT to submit cost studies at the present time for Cell 3 services instead of allowing OBT to file such studies at the time of a rate change or a change in its pricing levels. As a result of staff's failure to require OBT to file such cost studies currently, neither staff nor any parties to this proceeding have an ability to analyze the full financial impact of any individual cost study on the overall revenue and expenses of the company.

24. The Staff Report erred at page 44 in not requiring OBT to submit cost studies at the present time for Cell 4 services and further erred in not requiring OBT to provide Cell 4 services through a separate subsidiary in order to avoid anti-competitive practices and cross-subsidization.

25. The Staff Report erred at page 46 in recommending that the statutory complaint procedures should be utilized in determining whether OBT's practices during an 18 month new services trial period have anti-competitive implications. In the event of allegations of anti-competitive behavior OBT should bear the burden of justifying its actions.

26. The Staff Report erred at page 53 in recommending in year 4 of the plan that OBT be required to provide a fully allocated cost study only for then current Cell 1 services. The Staff Report should have required a fully allocated cost study for each year of the plan and for all cells because of the limited competition OBT faces for all of its services but in particular for Cells 2 and 3.

27. The Staff Report erred at page 53 in not requiring OBT in the 4th year of the plan to submit a report showing all of its jurisdictional revenues and expenses as well as its overall profitability in order to allow the Commission properly to

assess the financial status of OBT and the impact of that financial status on both OBT and its customers and competitors.

28. The Staff Report erred at page 53 in not requiring OBT in the 4th year of the plan to provide an assessment of the level of competition in all of the Cells instead of just the level of competition in the provision of local exchange services.

29. The Staff Report erred at page 59 in not explicitly requiring Applicant to support any filing for a new Cell 1 service with a fully allocated cost study.

30. The Staff Report erred at page 59 in not explicitly requiring Applicant to support any filing for a new Cell 3 service with a fully allocated cost study.

31. The Staff Report erred at page 60 in failing specifically to recommend competitive standards which must be met prior to cell assignment. While the N-ST Recommendation 8.1 has been spiritually adopted by staff, it has not been explicitly recommended. The Staff Report further erred in failing to utilize such cell classification criteria in assigning existing services based upon demonstrated competitive alternatives as per the criteria.

32. The Staff Report erred at page 80 in recommending that OBT be allowed to enter into service contracts supported only by LRSIC studies instead of fully allocated cost studies.

33. The Staff Report erred at page 80 when it recommended that OBT be allowed to enter into contracts for Cell 3 services based upon LRSIC costs as opposed to fully allocated costs.

34. The Staff Report erred at page 80 failing to recommend a specific standard for a purported competitive challenge if OBT wishes to enter into a contract for Cell 3 services.

35. The Staff Report erred at page 104 in not requiring OBT to explain its lack of progress in OBT infrastructure modernization as compared to its other operating states as per N-ST Recommendation 9.4.

36. By implicitly approving OBT's filing requirements for rate changes for Cell 2 services, the Staff Report at pages 58-60 denies OBT's competitors any effective means of protecting themselves against discriminatory rates, cross-subsidized rates, unfair competition and the offering of service at less than actual cost for the purpose of destroying competition. Even if OBT submits a LRSIC study at the time of a price change, the 30 days that the Commission and intervenors have to review the filing and "supporting information" is illusory; as a competitor will have no effective opportunity to assemble any information for the Commission to consider in opposition to the utility's proposal.

37. By approving OBT's LRSIC pricing methodology for competitive services, the Staff Report at pages 71-72 and 83 ignores the dominant provider power that OBT possesses in nearly all of its markets. The dominance of OBT's telecommunications network and OBT's access to monopoly customer resources require a more protective approach to competition. The Staff Report's "green field" approach to telecommunications

competition in OBT's operating territory ignores OBT's dominant provider power and the Commission's obligation under R.C. 4927.02 to encourage a competitive telecommunications environment.

Respectfully submitted,

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BY [signature]

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Summary of Issues and Objections to the Staff Report was mailed to all parties in this case shown on the attached list by first class mail, postage prepaid, this 25th day of April, 1994.

[signature]
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