

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Cincinnati Bell Telephone Company LLC)
for Waiver of Certain Minimum Telephone) Case No. 08-1197-TP-UNC
Service Standards as Set Forth in Chapter)
4901:1-5, Ohio Administrative Code.)

ENTRY ON REHEARING

The Commission finds:

- (1) On January 7, 2009, the Commission issued a finding and order (Order) in this case by which it granted an application filed on October 31, 2008, by Cincinnati Bell Telephone, Inc. (CBT), a local exchange company (LEC). Through the application CBT had sought a waiver of Rule 4901:1-5-03(B), Ohio Administrative Code (O.A.C.), the provision of the Commission's minimum telephone service standards (MTSS) that pertains to the manner in which LECs are to supply directories to their customers. Rule 4901:1-5-03(B), O.A.C., will be referred to in this entry on rehearing as MTSS Rule 3(B).
- (2) MTSS Rule 3(B) requires LECs, unless they provide a free directory assistance service, to provide, annually, a free, printed directory of all published telephone numbers in current use within the customer's local calling area. The rule allows the LEC to give customers the option to request an electronic directory, where available, so long as that electronic directory is provided at no charge.
- (3) The Order granted CBT's waiver application and, as such, effectively authorized CBT to cease providing, automatically, an annual, printed directory to all of its customers and to begin providing them, through the company's website, an electronic directory instead, so long as CBT continues to provide a free, printed directory to those customers who act affirmatively to receive one, and so long as CBT meets certain other conditions set forth in the Order.
- (4) Section 4903.10, Revised Code, indicates that any party who has entered an appearance in a Commission proceeding may apply for ~~this is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.~~
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rehearing with respect to any matters determined by filing an application within 30 days after the entry of the order upon the journal of the Commission. Under Rule 4901-1-35(B), O.A.C., any party may file a memorandum contra within ten days after the filing of an application for rehearing.

- (5) On February 6, 2009, the office of the Ohio Consumers' Counsel (OCC), as a party to this case whose motion for intervention was granted within the Order, filed an application for rehearing of the Order, along with an accompanying memorandum in support thereof. In response, CBT filed a memorandum contra OCC's rehearing application on February 17, 2009.
- (6) In its application for rehearing, OCC contends that the Commission's decision is unreasonable and unlawful based on four allegations of error. Specifically, OCC argues that the Order is unreasonable and unlawful for the following four reasons:
 - (a) CBT did not show good cause for granting its waiver, as required by the MTSS, since the waiver request was based on mere conjecture instead of actual data regarding customer preferences for a white pages directory. OCC claims that the Order is unlawful because the finding contained within it, that "CBT has adequately demonstrated sufficient reason for granting its waiver request" is unsupported by the record.
 - (b) In OCC's view, the Order failed to require CBT to send to new customers who do not want a printed directory, a verbatim printing of the telephone customer rights and responsibilities. OCC admits, however, that this information is contained within CBT's proposed electronic directory and, as such, is available to all new customers, including those who opt not to receive a printed directory. OCC contends that new customers who do not request a printed directory should not have to seek out on CBT's website, information concerning their rights and responsibilities as telephone customers, and suggests that the Commission should modify the Order so as to require CBT to provide all new customers with a verbatim printing of the

telephone customer rights and responsibilities, possibly in the welcome letter that they receive from CBT.

- (c) The Order failed to require CBT to allow customers to request a printed white pages directory by, among other methods, calling CBT on a toll-free basis. Although OCC says that the Commission should ensure that customers have a variety of options for requesting a directory, it recognizes that making the request by phone is the easiest, quickest and most convenient way for most customers.
 - (d) The Order failed to specify that CBT must deliver printed white pages directories within a reasonable period of time after a customer's request.
- (7) In its memorandum contra, CBT contends that each of OCC's four allegations of error are without merit and argues that, consequently, the Commission should deny OCC's rehearing application. Specifically, the company makes the following arguments:
- (a) The only standard to be applied by the Commission under the MTSS in determining whether to grant a rule waiver is that good cause must be shown. There is no requirement, notes CBT, that waiver requests must be supported by "data." The Order, says CBT, reflects numerous reasons why the Commission lawfully reached the conclusion that CBT has demonstrated good cause for granting its waiver request in this case.
 - (b) CBT claims that the Commission's current rules do not require delivery to new customers of a statement of customer rights and responsibilities. Paragraph (9)(C) of the Order, on the other hand, states that new customers must be provided with "all of the same information regarding CBT's methods of providing directory information as provided in the annual notice required under Paragraph (B) of this finding." CBT's

interpretation of this quoted language differs from that of OCC. While OCC says the quoted language imposes no burden to furnish new customers with a statement of their rights and responsibilities, CBT argues that the quoted language does indeed impose a burden on CBT to furnish new customers with both the information described in Paragraph (9)(B)(i) of the Order, which is focused on ensuring customers receive notice of the policy change that has resulted from the grant of CBT's waiver request in this case, and the information described in Paragraph (9)(B)(ii) of the Order, which is focused on ensuring customers receive a verbatim statement of their rights and responsibilities as telephone customers. Based on its interpretation, says CBT, there is no need for the Commission to modify the Order now on rehearing.

- (c) Given that local, toll-free calling already exists between all of CBT's Ohio exchanges, there is no need, says the company, for the Commission to modify the Order on rehearing in order to ensure that CBT customers may use a toll-free number to request printed directories.
 - (d) It would be unreasonable to impose an arbitrary fixed period of time within which a requested directory must be delivered, says CBT. Instead, CBT's existing commitment to provide a printed directory "promptly upon request" is sufficient and comports with the timing-of-delivery requirements that exist under the Commission's current rules.
- (8) Upon review of all relevant pleadings of record, the Commission finds OCC's rehearing application should be denied. We find OCC's first assignment of error, that there is no support in the record to grant the relief sought by CBT, to be without merit. The Commission made its determination to grant CBT a waiver as a matter of policy, not on a factual basis. The decision to grant CBT a waiver in this instance follows a long line of Commission precedent where we have recognized advances in technology and competition in the telecommunications market and used such advances to

modify Commission regulations. Most recently, the Commission recognized advancements in technology and competition to establish a process whereby incumbent local exchange carriers can, upon a proper showing, seek pricing flexibility for basic local exchange service to address a competitive threat from technologically advanced competitors who use wireless and voice over internet protocol technology (Case No. 05-1305-TP-ORD, *In the Matter of the Implementation of H.B. 218 Concerning Alternative Regulation of Basic Local Exchange Service of Incumbent Local Exchange Telephone Companies*). Thus, no findings of fact were necessary in order to justify the decision we made in this case to grant the waiver requested by CBT. Even in the absence of such factual findings, the Order fully and adequately explains the basis for the Commission's policy determination in this case to grant the requested waiver. Thus, our decision is both lawful and reasonable.

In the Order, the Commission held, in the manner and for the reasons explained within the Order, that as a matter of policy, CBT may cease providing, automatically, an annual printed directory to all of its customers and to begin instead providing them, through the company's website, an electronic directory that in some ways, as explained in the Order, is technically superior to the printed directory, so long as CBT must also continue to provide printed, free, annual, white pages directories to customers who request them.

As discussed in the Order, CBT adequately demonstrated good cause for granting the waiver it requested. Among the many societal benefits of granting CBT's waiver request are its positive impact on the environment, and significant resource savings. Granting the waiver provides a method to overcome a natural inertia that might likely otherwise cause people to continue receiving directories that they neither want nor use. Beyond this, there is the fact that the policy change that the waiver represents will, as implemented, continue to fully protect the interests and ability of customers who want to continue to receive a free printed annual directory.

We find OCC's second allegation of error, namely, that the Commission erred by failing to require CBT to send to new customers who do not want a printed directory, a verbatim printing of the telephone customer rights and responsibilities, to be

without merit. The language of Finding (9)(C) of the Order imposes a burden on CBT to furnish new customers with both notice of the policy change that has resulted from the grant of CBT's waiver request in this case and a verbatim statement of their rights and responsibilities as telephone customers. Given that CBT, in its memorandum contra OCC's rehearing application, has already explicitly acknowledged that this burden is imposed under the Order, there is no need to, through rehearing, modify the Order to bring this burden into effect.

We find OCC's third allegation of error, namely, that the Commission should have required CBT to provide a toll-free number to use in requesting printed white pages directories, also to be without merit. Given that local, toll-free calling already exists between all of CBT's Ohio exchanges, there is no need for the Commission to modify the Order on rehearing in order to ensure that CBT customers have use of a toll-free number to request printed directories.

Finally, we find OCC's fourth allegation of error also to be without merit, namely, that it was allegedly unlawful and unreasonable for the Order not to specify that CBT must deliver printed white pages directories within a reasonable period of time after a customer's request. In our view, CBT's commitment, of record, to provide a printed directory "promptly upon request" sufficiently addresses the issue and comports with the timing-of-delivery requirements that exist under the Commission's current rules.

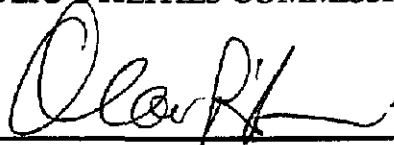
It is, therefore,

ORDERED, That, in accordance with the above findings, OCC's application for rehearing is denied and the Order is, in all respects, affirmed. It is, further,

ORDERED, That all rehearing arguments not specifically addressed in this rehearing entry are denied. It is, further,

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

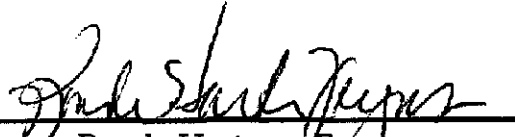
THE PUBLIC UTILITIES COMMISSION OF OHIO



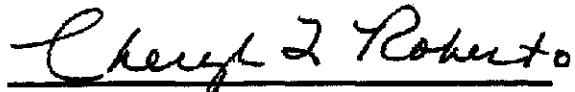
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Secretary