

In the Matter of the Application of )  
Cincinnati Bell Telephone to Increase the ) Case No. 90-5013-TP-TRF  
Rates of Its Directory Assistance Services. )

On March 17, 2009, Cincinnati Bell Telephone Company LLC (“CBT”) made a zero-day notice filing in the above-captioned docket to increase the price of its directory assistance service. Pursuant to Ohio Admin. Code § 4901:1-6-21(G), the rate change became effective immediately. CBT provided customers with advance notice of the price change in January 2009 and it has already gone into effect. Now, three months after the customer notice and two weeks after the price change, the Office of the Ohio Consumers’ Counsel (“OCC”) attempts to challenge the price change by moving to intervene and seeking a full suspension of the price increase. The OCC contends that the increase is not in the public interest and violates PUCO rules and Ohio law. However, the OCC misstates the facts and fails to identify any violation of PUCO rules or Ohio law or the public interest. The OCC has presented no valid basis to suspend CBT’s price increase so its motion should be denied.

## I. INTRODUCTION

On March 17, 2009, CBT made a zero-day notice filing to raise the charge for directory assistance by 26¢ from \$1.49 to \$1.75. Nothing about directory assistance service is changing except the price. Directory assistance is a Tier 2 service, so CBT is entitled to change the price without Commission approval. There is no Commission rule limiting pricing of directory assistance service or any other Tier 2 service (except the rule requiring pricing *above* the LRSIC floor). The OCC bases its objection to the price increase largely on the fact that CBT received a waiver on January 7, 2009 of the requirement that it automatically deliver a printed white pages directory to every customer.<sup>1</sup> However, there is no logical connection between the two events.

Even under the Directory Waiver, which only eliminates the automatic delivery requirement, CBT will continue to provide printed white pages directories annually to any customer that requests one, either through visiting one of its retail outlets or by making a request that a directory be delivered to them.<sup>2</sup> It is wholly within the customer's control whether they obtain possession of a printed directory. Directory assistance calls to obtain listings that do not appear in the printed directory will not be increased by the Directory Waiver, because consultation of the printed directory would not assist in avoiding those calls. So, the OCC's attempt to link the change in the price for directory assistance with the Directory Waiver fails completely.

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<sup>1</sup> *In the Matter of the Application of Cincinnati Bell Telephone Company LLC for Waiver of Certain Minimum Telephone Service Standards Pursuant to Chapter 4901:1-5, Ohio Administrative Code*, Case No. 08-1197-TP-WVR, Order (January 7, 2009) ("Directory Waiver").

<sup>2</sup> *Id.* at 7.

## **II. THE MOTION FOR A FULL SUSPENSION SHOULD BE DENIED**

The Commission should not grant the OCC's request for a suspension because CBT is fully compliant with the Elective Alternative Regulation Plan ("EARP") rules. As required by Ohio Admin. Code § 4901:1-6-17, CBT provided a customer notice to all affected customers at least fifteen days before filing the application. Under the EARP rules, the application was a zero day notice filing, meaning that the rates went into effect upon filing. CBT has been charging affected customers the new rates since March 17, 2009.

For the Commission to suspend CBT's filing after automatic approval has taken effect, there must be an "*ex post facto* determination . . . that a service previously automatically authorized may not be in the public interest or is in violation of commission rules and regulations."<sup>3</sup> There is no basis in this case to make either of those required findings. The OCC has not identified any violation of any Commission rule or regulation. There are no rules or regulations that limit the prices for Tier 2 services. Nor has the OCC provided any reason why CBT's filing is not in the public interest. The OCC's objection is the mere fact that there is a rate increase; however, rate increases for Tier 2 services (particularly where the rate is comparable to that charged by other providers for similar service) are not contrary to the public interest. Such price increases are expressly authorized by the Commission's rules. To hold otherwise would nullify the entire basis of the EARP rules, which rely upon market-based pricing.

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<sup>3</sup> Ohio Admin. Code § 4901:1-6-04.

**A. CBT's Rates Are Authorized By Law.**

CBT elected to be governed by the EARP pricing rules under Ohio Admin. Code § 4901:1-04-02,<sup>4</sup> which gave it wide freedom to price its Tier 2 services. There are no rate caps for Tier 2 services. CBT may price these services at market-based rates.<sup>5</sup> Therefore, the rate changes made by CBT are expressly authorized by the Commission's rules and should not be disturbed.

The EARP rules capped Tier 1 prices at existing rates for the duration of a plan with respect to core services and for two years with respect to non-core services (with other restrictions on increases thereafter). But nothing in the EARP rules restricts the ability to change prices for Tier 2 services, which ILECs are free to price as they wish unless a specific Commission rule *prohibits* a particular practice. There is no requirement that the Commission explicitly authorize rate increases, nor is an EARP ILEC required to provide a rationale for its market based rates. To force it to do so would be antithetic to a competitive market, as no competitor is required to explain how it determined its prices. Electing carriers have complete pricing freedom for Tier 2 services (so long as they comply with the LRSIC price floor). Thus, CBT does not have the burden of justifying a price change – the OCC has the burden of showing that a particular practice has been prohibited. It has not done so.

**B. CBT's Increase of Its Charges for Directory Assistance Is Not in Violation of Any Commission Rules or Regulations.**

The OCC falsely claims that the increase to CBT's directory assistance rates violates Commission rules and regulations. There is no rule limiting the prices for Tier 2 services, such

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<sup>4</sup> *In the Matter of the Application of Cincinnati Bell Telephone Company for Approval of an Alternative Form of Regulation Pursuant to Chapter 4901:1-4, Ohio Administrative Code*, Case No. 04-720-TP-ALT.

<sup>5</sup> Ohio Admin. Code § 4901:1-4-05(C)(4)(b).

as directory assistance. Telephone companies are free to change prices of Tier 2 services, which have been deemed competitive. Ohio Admin. Code § 4901:1-4-06(C)(4)(b) provides: “Tier 2 service rates are not subject to any rate cap and may be priced at market-based rates.” That is exactly what CBT has done.

Knowing that there is no price control of Tier 2 services, the OCC argues that a price increase constitutes an unfair act or practice under Ohio Admin. Code § 4901:1-5-04(A). Such a contention is absurd and a misuse of the unfair practices rule. Ohio Admin. Code § 4901:1-5-04 is aimed at unfair and deceptive practices, not prices. The rule requires things such as clear and conspicuous language disclosing the terms and conditions and fees for services. It does not regulate the magnitude of prices in any manner, only how prices are disclosed. The OCC does not contend that there is anything unclear, inconspicuous or deceptive about CBT’s rates for directory assistance service. The OCC just doesn’t like the price. But the price of a Tier 2 service is not regulated, particularly not by Ohio Admin. Code § 4901:1-5-04. That rule only requires “clear, conspicuous, and accurate” disclosure of “fees” and “rates”; it does not purport to set or limit the fees or rates.

In support of its bogus unfair practice argument, the OCC wrongly claims that CBT is “cutting back” on residential customers’ access to a printed white pages directory. That is absolutely false. As the Commission knows, CBT will make a printed directory available *free* to any customer on request. The Commission has already found that it is reasonable to have customers go to a CBT retail outlet or to contact the Company to request delivery of a printed residential white pages directory. OCC’s claim that the Directory Waiver means that residential customers will likely need to make more directory assistance calls is entirely unsupported. In fact, CBT has *increased* access to directory information by also providing online searchable

access to its directory database free of charge in addition to the printed directory. Because residential customers will still have ready access to CBT's residential white pages directory, their need to access directory assistance will not be adversely impacted by the recent Directory Waiver. If anything, CBT's new online directory listing search feature will *decrease* reliance on directory assistance service.

The OCC has absolutely failed to demonstrate that CBT's clear and conspicuous rate increase in directory assistance service is an unfair act or practice under Ohio Admin. Code § 4901:1-5-04. The Commission should deny the requested suspension on this ground as baseless.

**C. CBT's Price for Directory Assistance Is Not Contrary to the Public Interest.**

It is clear that the OCC objects to any price increase. But there is no rule or policy that makes an authorized price increase contrary to the public interest. The price increase is only 26¢, which can hardly be called unconscionable, particularly given the comparable rates charged by competing providers. Directory assistance is a discretionary service, which no one is required to use. If the OCC's argument that any price increase is contrary to the public interest was accepted, then no price increase would be allowed for any Tier 2 service.

CBT is not the only provider of directory assistance service in Ohio that charges \$1.75 or more for directory assistance calls. AT&T Ohio also charges \$1.75 for local directory assistance service<sup>6</sup> and \$1.99 for national directory assistance or a business category search.<sup>7</sup> According to the OCC's own website, Windstream charges \$1.99 for directory assistance.<sup>8</sup> Wireless carriers

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<sup>6</sup> AT&T PUCO No. 20, Part 11, Section 2, 9<sup>th</sup> Revised Sheet 3, § 1.B.1, 9<sup>th</sup> Revised Sheet 6, § 2.B.1.a.

<sup>7</sup> *Id.*, 6<sup>th</sup> Revised Sheet 8, § 3.B.1; 4<sup>th</sup> Revised Sheet 10, § 4.B.1.

<sup>8</sup> <http://www.pickocc.org/telecom/>.

AT&T Mobility,<sup>9</sup> Sprint Wireless<sup>10</sup> and T-Mobile<sup>11</sup> each charge \$1.79 for directory assistance calls. Long distance carrier MCI charges \$3.49 per call.<sup>12</sup> This data demonstrates that CBT's price for directory assistance is market-based and competitive with what others charge. This cannot be deemed an unfair or deceptive practice or to be contrary to the public interest.

The Commission made the decision in the EARP rules to allow market-based pricing of all Tier 2 services. A simple survey of the prices charged by other providers for directory assistance demonstrates that \$1.75 is an appropriate competitive rate. If CBT has misread the market and increased directory assistance pricing too much, the market will let it know. The Commission made that precise determination years ago in the EARP rules proceeding:

For nonbasic services, we are confident that, should an ILEC under elective alternative regulation seek to raise rates beyond a reasonable level, competitors will enter the market offering lower rates, subscribers will elect to obtain the service from an alternative source, or subscribers will simply cancel those services that they perceive are overpriced.<sup>13</sup>

With directory assistance service, the customer does not even have to "cancel" the service, they can simply choose not to use CBT for that service. It is up to the market, not the OCC or even the Commission, to make the determination of whether CBT's directory assistance rate is appropriate. The OCC has failed to show that the price increase is contrary to the public interest.

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<sup>9</sup> <http://www.wireless.att.com/learn/basics/choosing-features-services/cingular-411.jsp>.

<sup>10</sup> <http://www.nextel.com/en/services/calling/nextel411.shtml>.

<sup>11</sup> [http://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=411AndMore&tp=Svc\\_Tab\\_411More](http://www.t-mobile.com/shop/addons/services/information.aspx?PAsset=411AndMore&tp=Svc_Tab_411More).

<sup>12</sup> [http://consumer.mci.com/mci\\_service\\_agreement/res\\_pdf/FEB\\_01\\_09\\_GSA\\_ENG.pdf](http://consumer.mci.com/mci_service_agreement/res_pdf/FEB_01_09_GSA_ENG.pdf).

<sup>13</sup> *In the Matter of the Commission Ordered Investigation of an Elective Alternative Regulatory Framework for Incumbent Local Exchange Companies*, Case No. 00-1532-TP-COI, Opinion and Order (Dec. 6, 2001), at p. 14.

### III. CONCLUSION

The OCC has completely failed to provide any legal basis for the Commission to order a full suspension of CBT's directory assistance rate increase. CBT's directory assistance price increase is fully compliant with Ohio law and the Commission's Rules. As an EARP carrier, CBT's Tier 2 services are not subject to rate regulation. The OCC attempts to misuse the deceptive practices rule to regulate rates, not the proper *disclosure* of rates. Finally, the OCC has wholly failed to show how a rate similar to the rates charged by other providers of directory assistance service can be contrary to the public interest. Because the OCC has provided no proper basis for suspending the rates, its Motion for Full Suspension must be denied.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Motion to Intervene and Motion for Full Suspension by the Office of the Ohio Consumers' Counsel was served by electronic service to the persons listed below, on this 17th day of April 2009.

/s/ Douglas E. Hart  
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Summary: Memorandum of Cincinnati Bell Telephone Company LLC in Opposition to Motion for Full Suspension by the Office of the Ohio Consumers' Counsel electronically filed by Mr. Douglas E. Hart on behalf of CINCINNATI BELL TELEPHONE COMPANY