

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.)

³ OCC seeks intervention pursuant to R.C. Chapter 4911, R.C. 4903.221 and Ohio Adm. Code 4901-1-11.

directory assistance charge, coming at the same time that CBT is no longer automatically providing a printed residential white pages directory to all customers, is an unfair practice, in violation of Ohio Adm. Code 4901:1-5-04(A) (“Rule 4(A)”)⁴ In addition, the unbridled increase in the directory assistance charge has the most adverse affect on people with low incomes, and thus is not in the public interest.⁵

On April 17, 2009, CBT filed a memorandum in opposition to OCC’s motion for full suspension. CBT did not challenge OCC’s motion to intervene, and thus OCC’s intervention should be granted.

In its opposition to OCC’s Motion, CBT presented three arguments against suspension of the directory assistance charge increase. First, CBT argued that its directory assistance rate increase was authorized by the PUCO’s elective alternative regulation (“alt. reg.”) rules, and thus is lawful.⁶ Second, CBT asserted that because directory assistance rates may be market-based, Rule 4(A) only requires that CBT clearly and conspicuously disclose the rate increase to its customers.⁷ Third, CBT claimed that the rate it charges its customers for directory assistance is similar to directory assistance rates charged by other telephone companies in Ohio and thus is not contrary to the public interest.⁸ As discussed herein, CBT’s arguments are without merit and the Commission should suspend, pursuant to Ohio Adm. Code 4901:1-6-07(A) and (C), CBT’s increase in the charge that its customers pay for directory assistance.

⁴ Motion at 5-7.

⁵ Id. at 7-8.

⁶ Opposition at 4. The elective alt. reg. rules are in Ohio Adm. Code Chapter 4901:1-4.

⁷ Id. at 5-6.

⁸ Id. at 6-7.

II. ARGUMENT

A. **The Fact that CBT Is Operating Under Elective Alternative Regulation Is Irrelevant to the Commission’s Consideration of Whether CBT Committed an Unfair Practice in Increasing the Charge that Its Customers Pay for Directory Assistance.**

CBT argues that because it is operating under elective alt. reg. (“EARP”), its pricing of directory assistance should not be scrutinized. CBT contends that:

[N]othing 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).⁹

But CBT ignores the fact that its practices regarding directory assistance are subject to other Commission rules, in addition to the elective alt. reg. rules.

For example, CBT’s directory assistance charge is also subject to the retail service rules in Ohio Adm. Code Chapter 4901:1-6: “**The retail service rules set forth in this chapter, apply to incumbent local exchange carriers (ILEC) subscribing to a qualifying alternative regulation plan....**”¹⁰ Thus, the rate CBT charges its customers for directory assistance is subject to Ohio Adm. Code 4901:1-6-07(A), which provides:

Nothing contained within this chapter shall in any way preclude the commission, legal director, deputy legal director, or attorney examiner from imposing a full or partial suspension of any process herein or tariff approved pursuant to this chapter. Under this rule, a telephone company may be required to discontinue provision of the affected service(s), or under partial suspension, cease offering the affected service(s) to new customers, or take other actions with regard to the affected service(s) as the commission may require.

⁹ Id. at 4 (emphasis in original). “LRSIC” stands for “Long-Run Incremental Service Cost.”

¹⁰ Ohio Adm. Code 4901:1-6-02(A) (emphasis added).

Because CBT applied for the rate increase under a zero-day notice filing, the increase is also subject to Ohio Adm. Code 4901:1-6-07(A), which states: “A full or partial suspension may also be imposed, after an application has been approved under the automatic approval process or is subject to a zero-day notice filing, if an ex post facto determination is made that the tariff may not be in the public interest, or is in violation of commission rules and regulations.”

Further, Ohio Adm. Code Chapter 4901:1-5, the Commission’s Minimum Telephone Service Standards (“MTSS”), “sets forth the minimum requirements for the furnishing of adequate telephone service which apply to **all** telecommunications providers regulated by the commission.”¹¹ Rule 4(A), which is part of the MTSS, states: “Telecommunications providers shall not commit any unfair or deceptive act or practice in connection with customer transactions or disclosures.” As discussed in Section II.B., below, this rule is not limited. Thus, even though an ILEC’s directory assistance charge may be priced above LRSIC in compliance with the PUCO’s elective alt. reg. rules,¹² the charge is not beyond the reach of other PUCO regulations.

Zero-day applications generally are not considered to be Commission-approved.¹³ Under the retail service rules, the Commission may suspend zero-day notice filings “if an ex post facto determination is made that the tariff may not be in the public interest, or is

¹¹ Ohio Adm. Code 4901:1-5-02(A) (emphasis added).

¹² OCC does not challenge the fact that CBT’s directory assistance charge is priced above the LRSIC for the charge. Indeed, OCC believes that CBT’s directory assistance charge – especially as increased in the March 17, 2009 filing – may be priced **inordinately above** the LRSIC for the charge.

¹³ Ohio Adm. Code 4901:1-6-08(B). Although CBT seems to complain that OCC’s Motion was filed three months after customers were notified of the rate increase and two weeks after CBT applied for the rate increase (Opposition at 1), CBT ignores the fact that OCC did not receive the notice sent to customers in January, and the fact that OCC could not file its Motion until *after* CBT applied to increase the directory assistance charge to customers. Indeed, if OCC had filed a motion to suspend the rate increase before CBT applied for it, CBT likely would have complained that such a motion was procedurally defective.

in violation of commission rules and regulations.” Directory assistance charges are not exempt from such scrutiny. Thus, it is altogether proper for the Commission to determine whether the rate that CBT charges its customers for directory assistance is in the public interest or violates any Commission rule.

B. CBT’s View Regarding the Limitation of Rule 4 Is Wrong.

CBT argues that the Commission should not apply Rule 4(A) to the circumstances surrounding the increase in the charge that the Company’s customers pay for directory assistance. CBT claims that the rule is somehow limited to “unfair and deceptive practices, not prices.”¹⁴ The Company asserts that “[t]he 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.”¹⁵ CBT is wrong.

Rule 4(A) states: “Telecommunications providers shall not commit **any unfair** or deceptive **act or practice** in connection with **customer transactions or** disclosures.” (Emphasis added.) Contrary to CBT’s distorted view of the rule, application of the rule is not limited to disclosures, but applies to **any** act “in connection with customer transactions....” Further, Ohio Adm. Code 4901:1-5-04(B) (“Rule 4(B)”), which expressly applies to disclosures, clearly specifies that it does **not** “limit[] the scope of paragraph (A) of this rule....” CBT’s supposition that Rule 4(A) is only “aimed at unfair and deceptive practices, not prices”¹⁶ is erroneous.

¹⁴ Opposition at 5.

¹⁵ Id.

¹⁶ Id.

As OCC discussed in its Motion, the increase in CBT's directory assistance rates for residential customers violates Rule 4(A).¹⁷ Increasing the charge that customers pay for directory assistance while at the same time discontinuing the automatic delivery of printed residential white pages directories to customers is an unfair act or practice in connection with a customer transaction, i.e., the provision of directory assistance. The Commission should therefore suspend the increase in CBT's directory assistance charges for residential customers, pursuant to Ohio Adm. Code 4901:1-6-07(A) and (C).

C. CBT's Increase in the Rate It Charges Customers for Directory Assistance Is Contrary to the Public Interest.

In an attempt to counter OCC's argument that the increase in the charge that the Company's customers pay for directory assistance is not in the public interest, CBT raises two issues. First, CBT compares its directory assistance charge to the directory assistance rates of other telephone companies, including cellular providers and long distance carriers.¹⁸ Second, CBT asserts that directory information is available through means other than calling the Company, such as through the Internet.¹⁹ Neither argument justifies rejection of OCC's motion for suspension.

CBT's comparison of its increased directory assistance charge to the directory assistance rates of AT&T, Windstream, AT&T Mobility, Sprint Wireless, T-Mobile and MCI is irrelevant to the issues raised by OCC. CBT does not assert that any of these companies provides directory assistance to the Company's landline customers in competition with the Company's directory assistance. The "market" that CBT

¹⁷ Motion at 5-7.

¹⁸ Opposition at 6-7.

¹⁹ Id. at 7.

supposedly bases its rates on should be comprised of only those companies that actually provide local directory assistance to CBT's landline customers. The Company's ability to raise rates simply to match the rates charged by other companies, especially companies that do not offer a competitive service for CBT's landline customers, demonstrates a failure of the marketplace to restrain prices. This is unfair to consumers, especially those customers who cannot use the services of the other companies.

Even if these companies' directory assistance services are available to CBT's landline customers, it is highly unlikely that they would ever call these companies in order to find a local number in CBT's service territory. These companies simply are not the local phone companies for CBT's territory. Instead, CBT's customers will rely on the Company to get a local telephone number in its territory.

Further, even if CBT's customers would consider calling one of these other companies for directory assistance, they would be deterred from doing so because it is much more convenient to call CBT. Instead of calling an 11-digit number to reach one of the other companies, CBT's landline customers are more likely to dial "411" – the only number listed for directory assistance in CBT's directory²⁰ – which connects them to CBT's service. Further, because CBT does not reveal its directory assistance charge in its directory, it is difficult for customers to comparison shop for directory assistance.

As for the availability of directory information on the Internet, OCC noted – and CBT did not dispute – that as many as 111,000 CBT residential customers do not have Internet access.²¹ For these customers, many of whom have low incomes, the Company's

²⁰ See CBT's 2008-2009 residential white pages directory at 2, 3, 10.

²¹ Motion at 6.

Internet directory assistance is not an option. Thus, directory assistance by telephone is essential for these customers.

CBT's arguments do not undermine one basic fact: To increase directory assistance charges for residential customers while, at the same time, making customer access to a printed residential white pages directory more difficult is unfair to residential customers. The Commission should suspend, pursuant to Ohio Adm. Code 4901:1-6-07(A) and (C), the increase in the charge that CBT's customers pay for directory assistance.

III. CONCLUSION

CBT has not challenged OCC's Motion to Intervene in this proceeding, and OCC should be granted intervention. In addition, as discussed herein, CBT's arguments against suspension of the increase in CBT's directory assistance charge to its customers are without merit. In order to protect consumers who are subjected to the rate increase for directory assistance, the Commission should suspend the increase to the charge that CBT's residential customers pay for directory assistance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply by the Office of the Ohio Consumers' Counsel was served by first class United States Mail, postage prepaid, to the persons listed below, on this 24th day of April 2009.

/s/ Terry L. Etter

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Summary: Reply Reply to Memorandum In Opposition to Motion for a Full Suspension of the Increase to the Charges that Cincinnati Bell's Residential Customers Pay For Directory Assistance by the Office of the Ohio Consumers' Counsel electronically filed by Mrs. Mary V. Edwards on behalf of Etter, Terry L. and Office of the Ohio Consumers' Counsel